

Senate Bill No. 36

Passed the Senate September 8, 2009

Secretary of the Senate

Passed the Assembly September 2, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 10100, 10140.6, 10150, 10151, 10235.5, and 10236.4 of, to add Article 2.1 (commencing with Section 10166.01) to Chapter 3 of Part 1 of Division 4 of, and to repeal Section 10131.8 of, the Business and Professions Code, to amend Sections 22100, 22101, 22101.5, 22102, 22103, 22104, 22106, 22107, 22108, 22109, 22112, 22151, 22152, 22153, 22154, 22155, 22156, 22157, 22159, 22168, 22169, 22170, 22171, 22700, 50002, 50003, 50120, 50121, 50122, 50123, 50124, 50125, 50126, 50128, 50129, 50130, 50200, 50201, 50202, 50204, 50205, 50206, 50208, 50302, 50307, 50310, 50317, 50318, 50320, 50325, 50333, 50401, 50700, and 50701 of, to add Sections 22012, 22013, 22014, 22105.1, 22105.2, 22105.3, 22105.4, 22109.1, 22109.2, 22109.3, 22109.4, 22109.5, 22109.6, 22172, 22347, 22755, 50002.5, 50003.5, 50003.6, 50209, 50307.2, and 50513 to, to add Chapter 3.5 (commencing with Section 50140) and Chapter 3.6 (commencing with Section 50150) to Division 20 of, and to repeal Sections 50601, 50602, and 50705 of, the Financial Code, and to add Section 18034 to the Health and Safety Code, relating to mortgages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 36, Calderon. Real estate, finance lender, and residential mortgage lender licenses: mortgage loan originators.

(1) Existing law, the Real Estate Law, governs the licensing and regulation of real estate licensees, as defined, as administered by the Real Estate Commissioner. Existing law imposes specified requirements on real estate brokers who solicit borrowers or lenders or negotiate loans or collect payments or perform services for borrowers or lenders relative to loans secured by real property. A willful violation of the Real Estate Law is a crime.

This bill would require a real estate license endorsement from the commissioner in order to engage in the business of a mortgage loan originator, as defined. The bill would establish penalties if a real estate licensee fails to obtain a license endorsement before conducting business as a mortgage loan originator and would

authorize the commissioner to suspend or revoke a real estate license for a failure to pay these penalties. The bill would require applicants for a license endorsement as a mortgage loan originator to furnish specified background information to the Nationwide Mortgage Licensing System and Registry. The bill would establish standards for issuance and renewal of a license endorsement to act as a mortgage loan originator, including satisfying specified educational requirements. The bill would require these real estate licensees to annually submit business activities reports, and other reports that may be required, to the commissioner. The bill would authorize the commissioner to examine the affairs of real estate brokers, including those that obtain license endorsement as a mortgage loan originator. The bill would require the commissioner to report violations of the provisions regulating real estate brokers and mortgage loan originators to the Nationwide Mortgage Licensing System and Registry. The bill would require recipients of a license endorsement as a mortgage loan originator to use or disclose a specified unique identifier provided by the Nationwide Mortgage Licensing System and Registry in advertisements and solicitations of the mortgage loan originator. The bill would enact other related provisions.

(2) Existing law provides for the licensure and regulation of finance lenders and brokers and residential mortgage lenders and servicers by the Department of Corporations. A willful violation of the laws regulating these licensees is a crime.

This bill would require the licensure and regulation of mortgage loan originators, as defined, under the California Finance Lenders Law and the California Residential Mortgage Lending Act. The bill would require mortgage loan originators to also be licensed and registered through the Nationwide Mortgage Licensing System and Registry. The bill would require applicants for licensure as a mortgage loan originator to furnish specified background information to the Nationwide Mortgage Licensing System and Registry and would require applicants for licensure or license renewal to satisfy certain requirements, including educational requirements. The bill would require finance lenders and brokers, and residential mortgage lenders and servicers, that employ a mortgage loan originator to maintain a minimum net worth of \$250,000. The bill would authorize the commissioner to require finance lenders and brokers, and residential mortgage lenders and

servicers, that employ a mortgage loan originator to submit reports of condition to the Nationwide Mortgage Licensing System and Registry. The bill would prescribe prohibited acts and authorize various types of disciplinary action to be taken against mortgage loan originators and require the commission to report violations of these provisions to the Nationwide Mortgage Licensing System and Registry. The bill would authorize the commissioner to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry, as specified, for the purposes of implementing these provisions of the bill. The bill would require a mortgage loan originator to use or disclose a specified unique identifier on all mortgage loan applications, solicitations, or advertisements. The bill would enact other related provisions.

(3) This bill would provide that no person is required to have a mortgage loan originator license under the California Finance Lenders Law or the California Residential Mortgage Lending Act before July 1, 2010, nor a mortgage loan originator license endorsement under the Real Estate Law, as set forth in the bill, before December 1, 2010.

(4) Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 10100 of the Business and Professions Code is amended to read:

10100. Before denying, suspending or revoking any license or license endorsement issuable or issued under the provisions of this part, the department shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted therein.

SEC. 2. Section 10131.8 of the Business and Professions Code is repealed.

SEC. 3. Section 10140.6 of the Business and Professions Code is amended to read:

10140.6. (a) A real estate licensee shall not publish, circulate, distribute, or cause to be published, circulated, or distributed in any newspaper or periodical, or by mail, any matter pertaining to any activity for which a real estate license is required that does not contain a designation disclosing that he or she is performing acts for which a real estate license is required.

(b) (1) A real estate licensee shall disclose his or her license identification number and, if that licensee is a mortgage loan originator, the unique identifier assigned to that licensee by the Nationwide Mortgage Licensing System and Registry, on all solicitation materials intended to be the first point of contact with consumers and on real property purchase agreements when acting as an agent in those transactions. The commissioner may adopt regulations identifying the materials in which a licensee must disclose a license identification number and, if that licensee is a mortgage loan originator, the unique identifier assigned to that licensee by the Nationwide Mortgage Licensing System and Registry.

(2) For purposes of this section, “solicitation materials intended to be the first point of contact with consumers” includes business cards, stationery, advertising fliers, and other materials designed to solicit the creation of a professional relationship between the licensee and a consumer, and excludes an advertisement in print or electronic media and “for sale” signs.

(3) Nothing in this section shall be construed to limit or change the requirement described in Section 10236.4 as applicable to real estate brokers.

(c) The provisions of this section shall not apply to classified rental advertisements reciting the telephone number at the premises of the property offered for rent or the address of the property offered for rent.

(d) “Mortgage loan originator,” “unique identifier,” and “Nationwide Mortgage Licensing System and Registry” have the meanings set forth in Section 10166.01.

SEC. 4. Section 10150 of the Business and Professions Code is amended to read:

10150. (a) Application for the real estate broker license examination shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the broker examination application. The application for the broker examination shall be accompanied by the real estate broker license examination fee.

(b) Persons who have been notified by the commissioner that they passed the real estate broker license examination may apply for a real estate broker license. A person applying for the broker examination may also apply for a real estate broker license. However, a license shall not be issued until the applicant passes the real estate broker license examination. If there is any change to the information contained in a real estate broker license application after the application has been submitted and before the license has been issued, the commissioner may require the applicant to submit a supplement to the application listing the changed information.

(c) Application for the real estate broker license shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the broker license application. The application for the real estate broker license shall be accompanied by the appropriate fee.

(d) Application for an endorsement to act as a mortgage loan originator, as defined in Section 10166.01, shall be made either electronically or in writing as directed by the commissioner. The commissioner may prescribe the format and content of the mortgage loan originator endorsement application, which shall meet the minimum requirements for licensing of a mortgage loan originator, pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).

SEC. 5. Section 10151 of the Business and Professions Code is amended to read:

10151. (a) Application for the real estate salesperson license examination shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the salesperson examination application. The application for the salesperson examination shall be accompanied by the real estate salesperson license examination fee.

(b) Persons who have been notified by the commissioner that they passed the real estate salesperson license examination may

apply for a real estate salesperson license. A person applying for the salesperson examination may also apply for a real estate salesperson license. However, a license shall not be issued until the applicant passes the real estate salesperson license examination. If there is any change to the information contained in a real estate salesperson license application after the application has been submitted and before the license has been issued, the commissioner may require the applicant to submit a supplement to the application listing the changed information.

(c) An application for the real estate salesperson license examination or for both the examination and license that is received by the commissioner on or after October 1, 2007, shall include evidence or certification, satisfactory to the commissioner, of successful completion at an accredited institution of a three-semester unit course, or the quarter equivalent thereof, or successful completion of an equivalent course of study as defined in Section 10153.5, in real estate principles as well as the successful completion at an accredited institution of a course in real estate practice and one additional course set forth in Section 10153.2, other than real estate principles, real estate practice, advanced legal aspects of real estate, advanced real estate finance, or advanced real estate appraisal. The applicant shall provide this evidence or certification to the commissioner prior to taking the real estate salesperson license examination.

(d) The commissioner shall waive the requirements of this section for the following applicants:

- (1) An applicant who is a member of the State Bar of California.
- (2) An applicant who has qualified to take the examination for an original real estate broker license by satisfying the requirements of Section 10153.2.

(e) Application for endorsement to act as a mortgage loan originator, as defined in Section 10166.01, shall be made either electronically or in writing as directed by the commissioner. The commissioner may prescribe the format and the content of the mortgage loan originator endorsement application, which shall meet the minimum requirements for licensing of a mortgage loan originator, pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).

SEC. 6. Article 2.1 (commencing with Section 10166.01) is added to Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, to read:

Article 2.1. Secure and Fair Enforcement for Mortgage Licenses

10166.01. For purposes of this article, the following definitions shall apply:

(a) “SAFE Act” means the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).

(b) (1) “Mortgage loan originator” means an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain. An individual real estate licensee acting within the meaning of paragraph (d) of Section 10131 is a mortgage loan originator for purposes of this article with respect to activities involving residential mortgage loans.

(2) Mortgage loan originator does not include any of the following:

(A) An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator, except as otherwise provided in subdivision (c) of Section 10166.03. The term “administrative or clerical tasks” means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(B) An individual that only performs real estate brokerage services, as defined in subdivision (a) or (b) of Section 10131, unless that person is compensated by a lender, other mortgage loan originator, or by any agent of any lender or other mortgage loan originator.

(C) An individual who solely renegotiates terms for existing mortgage loans held or serviced by his or her employer and who does not otherwise act as a mortgage loan originator, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that the SAFE Act requires such an employee to be licensed as a mortgage loan originator under state laws implementing the SAFE Act.

(D) An individual that is solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code.

(E) An individual licensed or registered as a mortgage loan originator pursuant to the provisions of the Financial Code and the SAFE Act.

(c) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

(d) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, or residential real estate upon which is constructed or intended to be constructed a dwelling. “Dwelling” means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobilehome, or trailer, if it is used as a residence.

(e) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

(f) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a mortgage loan originator.

10166.02. (a) A real estate broker who acts pursuant to Section 10131.1 or subdivision (d) or (e) of Section 10131, and who makes, arranges, or services loans secured by real property containing one to four residential units, and any salesperson who acts in a similar capacity under the supervision of that broker, shall notify the department by January 31, 2010, or within 30 days of commencing that activity, whichever is later. The notification shall be made in writing, as directed, on a form that is acceptable to the commissioner.

(b) No individual may engage in business as a mortgage loan originator under this article without first doing both of the following:

(1) Obtaining and maintaining a real estate license pursuant to Article 2 (commencing with Section 10150).

(2) Obtaining and maintaining a real estate license endorsement pursuant to this article identifying that individual as a licensed mortgage loan originator.

(c) License endorsements shall be valid for a period of one year and shall expire on the 31st of December each year.

(d) Applicants for a mortgage loan originator license endorsement shall apply in a form prescribed by the commissioner. Each form shall contain content as set forth by rule, regulation, instruction, or procedure of the commissioner.

(e) In order to fulfill the purposes of this article, the commissioner may establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this article.

(f) A real estate broker who fails to notify the department pursuant to subdivision (a), or who fails to obtain a license endorsement required pursuant to paragraph (2) of subdivision (b), shall be assessed a penalty of fifty dollars (\$50) per day for each day written notification has not been received or a license endorsement has not been obtained, up to and including the 30th day after the first day of the assessment penalty. On and after the 31st day, the penalty is one hundred dollars (\$100) per day, not to exceed a total penalty of ten thousand dollars (\$10,000), regardless of the number of days, until the department receives the written notification or the licensee obtains the license endorsement. Penalties for violations of subdivisions (a) and (b) shall be additive.

(g) The commissioner may suspend or revoke the license of a real estate broker who fails to pay a penalty imposed pursuant to this section. In addition, the commissioner may bring an action in an appropriate court of this state to collect payment of that penalty.

(h) All penalties paid or collected under this section shall be deposited into the Recovery Account of the Real Estate Fund and shall, upon appropriation by the Legislature, be available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section 10470).

10166.03. (a) A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator shall not be required to obtain a license endorsement as a mortgage loan originator.

(b) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(c) An independent contractor who is employed by a mortgage loan originator may not engage in the activities of a loan processor or underwriter for a residential mortgage loan unless the independent contractor loan processor or underwriter obtains and maintains an endorsement as a mortgage loan originator under this article. Each independent contractor loan processor or underwriter who obtains and maintains an endorsement as a mortgage loan originator under this article shall have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

10166.04. (a) In connection with an application to the commissioner for a license endorsement as a mortgage loan originator, every applicant shall furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including the following:

(1) Fingerprint images and related information, for purposes of performing a federal, or both a state and federal, criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain both of the following:

(A) An independent credit report from a consumer reporting agency.

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(b) The commissioner may ask the Nationwide Mortgage Licensing System and Registry to obtain state criminal history background check information on applicants described in subdivision (a) using the procedures set forth in subdivisions (c) and (d).

(c) If the Nationwide Mortgage Licensing System and Registry electronically submits fingerprint images and related information, as required by the Department of Justice, for an applicant for a mortgage loan originator license endorsement, to the Department of Justice for the purposes of obtaining information as to the existence and content of a record of state convictions and state arrests, and as to the existence and content of a record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal, the Department of Justice shall provide an electronic response to the Nationwide Mortgage Licensing System and Registry pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code, and shall provide the same electronic response to the department.

(d) The Nationwide Mortgage Licensing System and Registry may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a). The Department of Justice shall provide the same electronic response to the department.

(e) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

10166.05. Notwithstanding any other provision of law, the commissioner shall not issue a license endorsement to act as a mortgage loan originator to an applicant unless the commissioner makes all of the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of a revocation shall not be deemed a revocation.

(b) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court, under either of the following conditions, however, any

pardon of a conviction shall not be considered a conviction for purposes of this subdivision:

(1) During the seven year period preceding the date of the application for licensing.

(2) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

(c) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the article.

(d) The applicant has complied with the education and written testing requirements in Section 10166.06.

10166.06. (a) In addition to the requirements of Section 10153, an applicant for a license endorsement as a mortgage loan originator shall complete at least 20 hours of education courses, which shall include at least the following:

(1) Three hours of federal law and regulations.

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of this section, education courses are only acceptable if they have been reviewed and approved, or otherwise deemed acceptable, by the Nationwide Mortgage Licensing System and Registry, in accordance with the SAFE Act. Education may be offered in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry, in accordance with the SAFE Act.

(c) A person who successfully completes the education requirements approved by the Nationwide Mortgage Licensing System and Registry in any state other than California shall be granted credit by the commissioner toward completion of the education requirements of this section.

(d) Before being issued a license endorsement to act as a mortgage loan originator, an individual shall pass a qualified written test developed or otherwise deemed acceptable by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved or otherwise deemed

acceptable by the Nationwide Mortgage Licensing System and Registry.

(e) A written test shall not be treated as a qualified written test for purposes of this section, unless the test adequately measures the applicant's knowledge and comprehension in the following subject areas: ethics, federal law and regulation pertaining to mortgage origination, state law and regulation pertaining to mortgage origination, and federal and state law and regulation relating to fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(f) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(g) An individual shall not be considered to have passed a qualified written test administered pursuant to this section unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(h) An individual who fails the qualified written test may retake the test up to three consecutive times, although at least 30 days must pass between each retesting.

(i) An applicant who fails three consecutive retests must wait at least six months before retesting.

(j) A mortgage loan originator who fails to maintain a valid license endorsement for a period of five years or longer or who fails to register as a mortgage loan originator in accordance with applicable California law shall retake the qualified written test.

10166.07. (a) A real estate broker who acts pursuant to Section 10131.1 or subdivision (d) or (e) of Section 10131, and who makes, arranges, or services one or more loans in a calendar year that are secured by real property containing one to four residential units, shall annually file a business activities report, within 90 days after the end of the broker's fiscal year or within any additional time as the commissioner may allow for filing for good cause. The report shall contain within its scope all of the following information for the fiscal year, relative to the business activities of the broker and those of any other brokers and real estate salespersons acting under that broker's supervision:

(1) Name and license number of the supervising broker and names and license numbers of the real estate brokers and salespersons under that broker's supervision. The report shall include brokers and salespersons who were under the supervising broker's supervision for all or part of the year.

(2) A list of the real estate-related activities in which the supervising broker and the brokers and salespersons under his or her supervision engaged during the prior year. This listing shall identify all of the following:

(A) Activities relating to mortgages, including arranging, making, or servicing.

(B) Other activities performed under the real estate broker's or salesperson's license.

(C) Activities performed under related licenses, including, but not limited to, a license to engage as a finance lender or a finance broker under the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), or a license to engage as a residential mortgage lender or residential mortgage loan servicer under the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code).

(3) A list of the forms of media used by the broker and those under his or her supervision to advertise to the public, including print, radio, television, the Internet, or other means.

(4) For fixed rate loans made, brokered, or serviced, all of the following:

(A) The total number, aggregate principal amount, lowest interest rate, highest interest rate, and a list of the institutional lenders of record. If the loan was funded by any lender other than an institutional lender, the broker shall categorize the loan as privately funded.

(B) The total number and aggregate principal amount of covered loans, as defined in Section 4970 of the Financial Code.

(C) The total number and aggregate principal amount of loans for which Department of Real Estate form RE Form 885 or an equivalent is required.

(5) For adjustable rate loans made, brokered, or serviced, all of the following:

(A) The total number, aggregate principal amount, lowest beginning interest rate, highest beginning interest rate, highest

margin, and a list of the institutional lenders of record. If the loan was funded by any lender other than an institutional lender, the broker shall categorize the loan as privately funded.

(B) The total number and aggregate principal amount of covered loans, as defined in Section 4970 of the Financial Code.

(C) The total number and aggregate principal amount of loans for which Department of Real Estate form RE Form 885 or an equivalent is required.

(6) For all loans made, brokered, or serviced, the total number and aggregate principal amount of loans funded by institutional lenders, and the total number and aggregate principal amount of loans funded by private lenders.

(7) For all loans made, brokered, or serviced, the total number and aggregate principal amount of loans that included a prepayment penalty, the minimum prepayment penalty length, the maximum prepayment penalty length, and the number of loans with prepayment penalties whose length exceeded the length of time before the borrower's loan payment amount could increase.

(8) For all loans brokered, the total compensation received by the broker, including yield spread premiums, commissions, and rebates, but excluding compensation used to pay fees for third-party services on behalf of the borrower.

(9) For all mortgage loans made or brokered, the total number of loans for which a mortgage loan disclosure statement was provided in a language other than English, and the number of forms provided per language other than English.

(10) For all mortgage loans serviced, the total amount of funds advanced to be applied toward a payment to protect the security of the note being serviced.

(11) For purposes of this section, an institutional lender has the meaning specified in paragraph (1) of subdivision (c) of Section 10232.

(b) A broker subject to this section and Section 10232.2 may file consolidated reports that include all of the information required under this section and Section 10232.2. Those consolidated reports shall clearly indicate that they are intended to satisfy the requirements of both sections.

(c) If a broker subject to this section fails to timely file the report required under this section, the commissioner may cause an examination and report to be made and may charge the broker one

and one-half times the cost of making the examination and report. In determining the hourly cost incurred by the commissioner for conducting an examination and preparing the report, the commissioner may use the estimated average hourly cost for all department audit staff performing audits of real estate brokers. If a broker fails to pay the commissioner's cost within 60 days of the mailing of a notice of billing, the commissioner may suspend the broker's license or deny renewal of that license. The suspension or denial shall remain in effect until the billed amount is paid or the broker's right to renew a license has expired. The commissioner may maintain an action for the recovery of the billed amount in any court of competent jurisdiction.

(d) The report described in this section is exempted from any requirement of public disclosure by paragraph (2) of subdivision (d) of Section 6254 of the Government Code.

(e) The commissioner may waive the requirement to submit certain information described in paragraphs (1) to (10), inclusive, of subdivision (a) if the commissioner determines that this information is duplicative of information required by the Nationwide Mortgage Licensing System and Registry, pursuant to Section 10166.08.

10166.08. Each mortgage loan originator shall submit reports of condition to the Nationwide Mortgage Licensing System and Registry reports of condition, and those reports shall be in the form and shall contain information as the Nationwide Mortgage Licensing System and Registry may require.

10166.09. The minimum standards for renewal of an endorsement as a mortgage loan originator shall include the following:

(a) The mortgage loan originator continues to meet the minimum standards for obtaining an endorsement as a mortgage loan originator.

(b) The mortgage loan originator satisfies the annual continuing education requirements described in Section 10166.10.

10166.10. (a) A mortgage loan originator shall complete at least eight hours of continuing education annually, which shall include at least three hours relating to federal law and regulations, two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues, and two hours related

to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subdivision (a), continuing education courses and course providers shall be reviewed and approved by the commissioner and the Nationwide Mortgage Licensing System and Registry.

(c) The commissioner shall have the authority to substitute any of the courses described in subdivision (a) for the course requirements of Section 10170.5, subject to a finding that the course requirements in subdivision (a) and the course completion standards in subdivision (g) of Section 10166.06 are substantially equivalent to, and meet the intent of, Section 10170.5.

(d) Nothing in this section shall preclude any education course, as approved by the commissioner and the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(e) Continuing education may be offered either in a classroom, online, or by any other means approved by the commissioner and the Nationwide Mortgage Licensing System and Registry.

(f) A mortgage loan originator may only receive credit for a continuing education course in the year in which the course is taken.

(g) A mortgage loan originator may not take the same approved course in the same or successive years to meet the requirements of this section for continuing education.

(h) A mortgage loan originator who is an instructor of an approved continuing education course may receive credit for his or her own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(i) A person who successfully completes the education requirements approved by the Nationwide Mortgage Licensing System and Registry in any state other than California shall be granted credit by the commissioner towards completion of continuing education requirements in this state.

(j) A mortgage loan originator whose license endorsement lapses, expires, or is suspended or revoked, and who wishes to regain his or her license endorsement, shall complete continuing

education requirements for the last year in which the endorsement was held, prior to issuance of a new or renewed endorsement.

10166.11. (a) A real estate broker who acts pursuant to Section 10131.1 or subdivision (d) or (e) of Section 10131 and who makes, arranges, or services loans secured by real property containing one to four residential units, shall keep documents and records that will properly enable the commissioner to determine whether the residential mortgage brokerage, servicing, and lending functions performed by the broker comply with this division and with all applicable rules and orders made by the commissioner. These documents shall include, at a minimum, the documents described in Section 10148. Upon request of the commissioner, a real estate broker shall file an authorization for disclosure to the commissioner of financial records of his or her licensed business pursuant to Section 7473 of the Government Code.

(b) Notwithstanding subdivision (a) of Section 10148, the business documents and records of real estate brokers described in subdivision (a) and real estate salespersons acting under those brokers are subject to inspection and examination or audit by the commissioner, at his or her discretion, after reasonable notice. That real estate broker or salesperson shall, upon request by the commissioner and within the time period specified in that request, allow the commissioner, or his or her authorized representative, to inspect and copy any business documents and records. The commissioner may suspend or revoke the license of the broker or salesperson if he or she fails to produce documents or records within the time period specified in the request.

(c) Inspection and examination or audit reports prepared by the commissioner's duly designated representatives pursuant to this section are not public records. Those reports may be disclosed to the officers or directors of a licensee that is the subject of the report for the purpose of corrective action. That disclosure shall not operate as a waiver of the exemption specified in subdivision (d) of Section 6254 of the Government Code.

10166.12. (a) As often as the commissioner deems necessary and appropriate, the commissioner shall examine the affairs of each real estate broker who is required to notify the commissioner or obtain a license endorsement pursuant to Section 10166.02 for compliance with this part. These examinations shall also include a review of the affairs of all real estate brokers and real estate

salespersons acting under the supervision of each real estate broker who is required to file reports with the department pursuant to Section 10166.07. The commissioner shall appoint suitable persons to perform these examinations. The commissioner and his or her appointees may examine the books, records, and documents of the licensee, and may examine the licensee's officers, directors, employees, or agents under oath regarding the licensee's operations. The commissioner may cooperate with any agency of the state or federal government, other states, agencies, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation. The commissioner may accept an examination conducted by one of these entities in place of an examination by the commissioner under this section, unless the commissioner determines that the examination does not provide information necessary to enable the commissioner to fulfill his or her responsibilities under this division.

(b) The commissioner may impose a penalty against a real estate broker or real estate salesperson whose affairs are examined or reviewed pursuant to subdivision (a) based on the findings of the examination or review. The commissioner may suspend or revoke the license or license endorsement of a real estate broker or real estate salesperson who fails to pay that penalty. In addition, the commissioner may bring an action in an appropriate court of this state to collect payment of the penalty.

(c) Penalties collected pursuant to subdivision (b) shall be deposited into the Recovery Account of the Real Estate Fund and shall, upon appropriation by the Legislature, be available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section 10470).

(d) The statement of the findings of an examination conducted pursuant to this section shall belong to the commissioner and shall not be disclosed to anyone other than the licensee, law enforcement officials, or other state or federal regulatory agencies for further investigation and enforcement. Reports required of licensees by the commissioner under this division and results of examinations performed by the commissioner under this division are the property of the commissioner.

10166.13. A real estate broker who acts pursuant to Section 10131.1 or subdivision (d) or (e) of Section 10131 and who makes, arranges, or services loans secured by real property containing one

to four residential units shall make any special reports to the commissioner that the commissioner may, from time to time, require.

10166.14. A real estate broker shall notify the department when he or she is no longer subject to this part. If a broker has already made reports required by Sections 10166.07 and 10166.08 within the year, he or she shall continue reports for that year, but shall notify the department prior to the expiration of that year that he or she will no longer be subject to this part in the succeeding year.

10166.15. (a) The commissioner shall regularly report violations of this article, as well as enforcement actions taken against any mortgage loan originator to whom an endorsement has been issued, and enforcement actions taken against any individual for failure to obtain an endorsement as a mortgage loan originator, to the Nationwide Mortgage Licensing System and Registry.

(b) The commissioner shall establish a process that may be used by mortgage loan originators to challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

(c) The commissioner is authorized to promulgate regulations specifying (1) the recordkeeping requirements that mortgage loan originators shall satisfy and (2) the penalties that shall apply to mortgage loan originators for violations of this article.

10166.16. (a) Except as otherwise provided in Section 1512 of the SAFE Act, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

(b) For these purposes, the commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other

associations representing governmental agencies as established by rule, regulation or order of the commissioner.

(c) Information or material that is subject to a privilege or confidentiality under subdivision (a) shall not be subject to either of the following:

(1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the state.

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

10166.17. In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the commissioner may establish by rule, regulation, or order, requirements as necessary, including, but not limited to, the following:

(a) Background checks for the following:

(1) Criminal history through fingerprint or other databases.

(2) Civil or administrative records.

(3) Credit history.

(4) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.

(b) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry.

(c) The setting or resetting as necessary of renewal or reporting dates.

(d) Requirements for amending or surrendering a license or any other activities as the commissioner deems necessary for

participation in the Nationwide Mortgage Licensing System and Registry.

SEC. 7. Section 10235.5 of the Business and Professions Code is amended to read:

10235.5. (a) No real estate licensee or mortgage loan originator shall place an advertisement disseminated primarily in this state for a loan unless there is disclosed within the printed text of that advertisement, or the oral text in the case of a radio or television advertisement, the Department of Real Estate license number and the unique identifier assigned to that licensee by the Nationwide Mortgage Licensing System and Registry under which the loan would be made or arranged.

(b) “Mortgage loan originator,” “unique identifier,” and “Nationwide Mortgage Licensing System and Registry” have the meanings set forth in Section 10166.01.

SEC. 8. Section 10236.4 of the Business and Professions Code is amended to read:

10236.4. (a) In compliance with Section 10235.5, every licensed real estate broker shall also display his or her license number on all advertisements where there is a solicitation for borrowers or potential investors. Every mortgage loan originator, as defined in Section 10166.01, shall also display the unique identifier assigned to that individual by the Nationwide Mortgage Licensing System and Registry on all advertisements where there is a solicitation for borrowers.

(b) The disclosures required by Sections 10232.4 and 10240 shall include the licensee’s license number, the mortgage loan originator’s unique identifier, if applicable, and the department’s license information telephone number.

(c) “Mortgage loan originator,” “unique identifier,” and “Nationwide Mortgage Licensing System and Registry” have the meanings set forth in Section 10166.01.

SEC. 9. Section 22012 is added to the Financial Code, to read:

22012. (a) “Branch office license” means a license to engage in business as a finance lender or broker at a location other than the location identified in a finance lender or broker license application or amended application.

(b) “Depository institution” has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(c) “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(d) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(e) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in Section 103(v) of the federal Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling. “Dwelling” means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobilehome, or trailer, if it is used as a residence.

(f) “SAFE Act” means the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).

(g) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

(h) For purposes of Sections 22109.2, 22109.3, and 22109.5, “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

SEC. 10. Section 22013 is added to the Financial Code, to read:

22013. (a) “Mortgage loan originator” means an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

(b) Mortgage loan originator does not include any of the following:

(1) An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator, except as provided in subdivision (c) of Section 22014. The term “administrative or clerical tasks” means the receipt, collection, and distribution of information common for

the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(2) An individual who solely renegotiates terms for existing mortgage loans held or serviced by his or her employer and who does not otherwise act as a mortgage loan originator, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that the SAFE Act requires such an employee to be licensed as a mortgage loan originator under state laws implementing the SAFE Act.

(3) An individual that is solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code.

(4) An individual licensed as a mortgage loan originator pursuant to the provisions of Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code and the SAFE Act.

(c) “Registered mortgage loan originator” means any individual who is all of the following:

(1) Meets the definition of mortgage loan originator.

(2) Is an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration.

(3) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(d) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a mortgage loan originator licensed by the state or a registered mortgage loan originator.

SEC. 11. Section 22014 is added to the Financial Code, to read:

22014. (a) A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of

the activities of a mortgage loan originator shall not be required to be licensed as a mortgage loan originator.

(b) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(c) An independent contractor may not engage in the activities of a loan processor or underwriter for a residential mortgage loan unless the independent contractor loan processor or underwriter obtains and maintains a mortgage loan originator license under this division. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

SEC. 12. Section 22100 of the Financial Code is amended to read:

22100. (a) No person shall engage in the business of a finance lender or broker without obtaining a license from the commissioner.

(b) Every licensee engaging in the business of making or brokering residential mortgage loans shall require that every mortgage loan originator employed or compensated by that licensee obtains and maintains a mortgage loan originator license from the commissioner under this division or Division 20 (commencing with Section 50000), or has first obtained a license endorsement from the Commissioner of Real Estate pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code.

(c) A finance lender or broker shall not employ a mortgage loan originator whose license or license endorsement has lapsed.

(d) A finance lender or broker may not make or broker a residential mortgage loan unless that loan is offered by, negotiated by, or applied for through a licensed mortgage loan originator.

(e) Every licensee engaged in the business of making or brokering residential mortgage loans and every mortgage loan originator licensed under this division shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

SEC. 13. Section 22101 of the Financial Code is amended to read:

22101. (a) An application for a license as a finance lender or broker under this division shall be in the form and contain the information that the commissioner may by rule require and shall be filed upon payment of the fee specified in Section 22103.

(b) Notwithstanding any other provision of law, an applicant who does not currently hold a license as a finance lender or broker under this division shall furnish with his or her application, a full set of fingerprints and related information for purposes of the commissioner conducting a criminal history record check. The commissioner shall obtain and receive criminal history information from the Department of Justice and the Federal Bureau of Investigation pursuant to Section 22101.5.

(c) Nothing in this section shall be construed to prevent a licensee from engaging in the business of a finance lender through a subsidiary corporation if the subsidiary corporation is licensed pursuant to this division.

(d) For purposes of this section, “subsidiary corporation” means a corporation that is wholly owned by a licensee.

(e) A new application shall not be required for a change in the address of an existing location previously licensed under this division. However, the licensee shall comply with the requirements of Section 22153.

(f) Notwithstanding subdivisions (a) to (e), inclusive, the commissioner may by rule require an application to be made through the Nationwide Mortgage Licensing System and Registry, and may require fees, fingerprints, financial statements, supporting documents, changes of address, and any other information, and amendments or modifications thereto, to be submitted in the same manner.

SEC. 14. Section 22101.5 of the Financial Code is amended to read:

22101.5. (a) The commissioner shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all finance lender and broker license candidates, as defined by subdivision (a) of Section 22101, for purposes of obtaining information as to the existence and content of a record of state or federal convictions, state or federal arrests, and information as to the existence and content of a record of state

or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(b) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the commissioner.

(c) The Department of Justice shall provide a response to the commissioner pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(d) The commissioner shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for license candidates described in subdivision (a).

(e) The Department of Justice shall charge a fee sufficient to cover the costs of processing the requests pursuant to this section.

(f) Notwithstanding subdivisions (a) to (e), inclusive, the commissioner may by rule require fingerprints submitted by an applicant to be submitted to the Nationwide Mortgage Licensing System and Registry in addition to the Department of Justice.

SEC. 15. Section 22102 of the Financial Code is amended to read:

22102. (a) A finance lender or broker licensee seeking to engage in business at a new location shall submit an application for a branch office license to the commissioner at least 10 days before engaging in business at a new location and pay the fee required by Section 22103. The commissioner may require an applicant seeking to engage in business at a new location to submit its application, or parts thereof, through the Nationwide Mortgage Licensing System and Registry.

(b) The licensee may engage in business at the new location 10 days after the date of submission of a branch office application.

(c) (1) The commissioner shall approve or deny the person responsible for the lending activity at the new location in accordance with Section 22109, and shall notify the licensee of this decision within 90 days of the date of receipt of the application.

(2) If the commissioner denies the application, the licensee shall, within 10 days of the date of receipt of notification of the

commissioner's denial, submit a new application to the commissioner designating a different person responsible for the lending activity at the new location. The commissioner shall approve or deny the different person as provided in paragraph (1).

(d) A licensee shall not engage in business at a new location in a name other than a name approved by the commissioner.

(e) The commissioner may adopt regulations to implement the requirements of this section.

(f) A branch office license to engage in business at a new location shall be issued in accordance with this section. A change of street address of a place of business designated in a license shall be made in accordance with Section 22153 and shall not constitute a new location subject to the requirements of this section.

SEC. 16. Section 22103 of the Financial Code is amended to read:

22103. At the time of filing the application for a finance lender, broker, or branch office license, the applicant shall pay to the commissioner the sum of one hundred dollars (\$100) as a fee for investigating the application, plus the cost of fingerprint processing and the criminal history record check under Section 22101.5, and two hundred dollars (\$200) as an application fee. The investigation fee, including the amount for the criminal history record check, and the application fee are not refundable if an application is denied or withdrawn.

SEC. 17. Section 22104 of the Financial Code is amended to read:

22104. (a) The applicant shall file with the application for a finance lender or broker license financial statements prepared in accordance with generally accepted accounting principles and acceptable to the commissioner that indicate a net worth of at least twenty-five thousand dollars (\$25,000). Except as provided in subdivision (b), a licensee shall maintain a net worth of at least twenty-five thousand dollars (\$25,000) at all times.

(b) A licensee employing one or more mortgage loan originators shall continuously maintain a minimum net worth of at least two hundred fifty thousand dollars (\$250,000).

(c) The commissioner may promulgate rules or regulations with respect to the requirements for minimum net worth, as are necessary to accomplish the purposes of this division and comply with the SAFE Act.

SEC. 18. Section 22105.1 is added to the Financial Code, to read:

22105.1. (a) An applicant for a mortgage loan originator license shall apply by submitting the uniform form prescribed for such purpose by the Nationwide Mortgage Licensing System and Registry. The commissioner may require the submission of additional information or supporting documentation to the department.

(b) Section 461 of the Business and Professions Code shall not be applicable to the Department of Corporations when using a national uniform application adopted or approved for use by the Nationwide Mortgage Licensing System and Registry in connection with the SAFE Act.

(c) In connection with an application for a license as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including the following:

(1) Fingerprint images and related information, for purposes of performing a federal, or both a state and federal, criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain both of the following:

(A) An independent credit report obtained from a consumer reporting agency.

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(d) The commissioner may ask the Nationwide Mortgage Licensing System and Registry to obtain state criminal history background check information on applicants described in subdivision (a) using the procedures set forth in subdivisions (e) and (f).

(e) If the Nationwide Mortgage Licensing System and Registry electronically submits fingerprint images and related information, as required by the Department of Justice, for an applicant for a mortgage loan originator license, for the purposes of obtaining information as to the existence and content of a record of state convictions and state arrests and to the existence and content of a

record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal, the Department of Justice shall provide an electronic response to the Nationwide Mortgage Licensing System and Registry pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code, and shall provide the same electronic response to the commissioner.

(f) The Nationwide Mortgage Licensing System and Registry may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a). The Department of Justice shall provide the same electronic response to the commissioner.

(g) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

SEC. 19. Section 22105.2 is added to the Financial Code, to read:

22105.2. (a) The commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this division.

(b) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the commissioner is authorized to waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this division and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(c) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from, and distributing information to, the Department of Justice or any governmental agency.

(d) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(e) The commissioner shall establish a process where applicants and licensees may challenge information entered into the

Nationwide Mortgage Licensing System and Registry by the commissioner.

SEC. 20. Section 22105.3 is added to the Financial Code, to read:

22105.3. (a) Except as otherwise provided in Section 1512 of the SAFE Act, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

(b) For these purposes, the commissioner is authorized to enter agreements or share arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule, regulation, or order of the commissioner.

(c) Information or material that is subject to a privilege or confidentiality under subdivision (a) shall not be subject to the following:

(1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the state.

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(3) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

SEC. 21. Section 22105.4 is added to the Financial Code, to read:

22105.4. The commissioner shall regularly report violations of this division, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry, to the extent that information is public record.

SEC. 22. Section 22106 of the Financial Code is amended to read:

22106. (a) The finance lender or broker license shall state the name of the licensee, and if the licensee is a partnership, the names of its general partners, and if a corporation or an association, the date and place of its incorporation or organization, and the address of the licensee's principal business location. On the approval and licensing of a location pursuant to Section 22101 or 22102, the commissioner shall issue an original license endorsed to show the address of the authorized location and, if applicable, the name of the subsidiary corporation licensed to operate the location. The license shall state whether the licensee is licensed as a finance lender or a broker.

(b) An application for a license for a business location outside this state shall constitute an agreement by the applicant to do all of the following:

(1) Make the licensee's books, accounts, papers, records, and files available to the commissioner or the commissioner's representatives in this state.

(2) Pay the reasonable expenses for travel, meals, and lodging of the commissioner or the commissioner's representatives incurred during any investigation or examination made at the licensee's location outside this state.

A licensee located outside this state is not required to maintain books and records regarding licensed loans separate from those for other loans if the licensed loans can be readily identified.

SEC. 23. Section 22107 of the Financial Code is amended to read:

22107. (a) Each finance lender and broker licensee shall pay to the commissioner its pro rata share of all costs and expenses, including the costs and expenses associated with the licensing of mortgage loan originators it employs, reasonably incurred in the administration of this division, as estimated by the commissioner, for the ensuing year and any deficit actually incurred or anticipated

in the administration of the program in the year in which the assessment is made. The pro rata share shall be the proportion that a licensee's gross income bears to the aggregate gross income of all licensees as shown by the annual financial reports to the commissioner, for the costs and expenses remaining after the amount assessed pursuant to subdivision (c).

(b) On or before the 30th day of November in each year, the commissioner shall notify each licensee of the amount assessed and levied against it and that amount shall be paid by December 31. If payment is not made by December 31, the commissioner shall assess and collect a penalty, in addition to the assessment, of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(c) In the levying and collection of the assessment, a licensee shall neither be assessed for nor be permitted to pay less than two hundred fifty dollars (\$250) per licensed location per year.

(d) If a licensee fails to pay the assessment on or before the 31st day of January following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the licensee. If, after an order is made, a request for hearing is filed in writing within 30 days, and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a finance lender or broker licensee and any mortgage loan originator licensee employed by the finance lender or broker shall not conduct business pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

(e) The commissioner shall, by rule, establish the timelines, fees, and assessments applicable to applicants for original mortgage loan originator licenses, license renewals, and license changes under this division.

(f) Notwithstanding subdivisions (a) to (e), inclusive, the commissioner may by rule require licensees to pay assessments through the Nationwide Mortgage Licensing System and Registry.

SEC. 23.5. Section 22108 of the Financial Code is amended to read:

22108. (a) The commissioner may by rule require licensees to file, at the times that he or she may specify, the information that

he or she may reasonably require regarding any changes in the information provided in any application filed pursuant to this division.

(b) The commissioner may by rule require a licensee to file information through the Nationwide Mortgage Licensing System and Registry.

SEC. 24. Section 22109 of the Financial Code is amended to read:

22109. (a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for a finance lender or broker license for any of the following reasons:

(1) A false statement of a material fact has been made in the application.

(2) The applicant or an officer, director, general partner, person responsible for the applicant's lending activities in this state, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last 10 years, been convicted of or pleaded nolo contendere to a crime, or committed an act involving dishonesty, fraud, or deceit, if the crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

(3) The applicant or an officer, director, general partner, person responsible for the applicant's lending activities in this state, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.

(4) The applicant employs a mortgage loan originator who is not licensed, or has not initiated an application to become licensed, pursuant to this division.

(b) The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written notification of a deficiency in the application within 90 days of the date of the notification.

(c) The commissioner shall, within 60 days from the filing of a full and complete application for a license with the fees, either issue a license or file a statement of issues prepared in accordance

with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 25. Section 22109.1 is added to the Financial Code, to read:

22109.1. The commissioner shall not issue a mortgage loan originator license unless the commissioner makes, at a minimum, the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of a revocation shall not be deemed a revocation.

(b) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court, as follows:

(1) During the seven-year period preceding the date of the application for licensing and registration.

(2) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

(3) Provided that any pardon of a conviction shall not be a conviction for purposes of this subdivision.

(c) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

(d) The applicant has completed the prelicensing education requirement described in Section 22109.2.

(e) The applicant has passed a written test that meets the test requirement described in Section 22109.3.

(f) The applicant is employed by, and subject to the supervision of, a finance lender or broker that has obtained a license from the commissioner pursuant to this division.

SEC. 26. Section 22109.2 is added to the Financial Code, to read:

22109.2. (a) An applicant for a mortgage loan originator license shall complete at least 20 hours of education approved in accordance with subdivision (b). The education shall include at least the following:

(1) Three hours of instruction on federal law and regulations.

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subdivision (a), preclicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry. Review and approval of a preclicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any preclicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Preclicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The preclicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry for any state other than California shall be accepted as credit toward completion of preclicensing education requirements in California.

(f) An individual previously licensed under this division as a mortgage loan originator, applying to be licensed again, shall prove that he or she has completed all of the continuing education requirements for the year in which the license was last held.

SEC. 27. Section 22109.3 is added to the Financial Code, to read:

22109.3. (a) An applicant for a mortgage loan originator license shall pass a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry.

(b) A written test shall not be treated as a qualified written test for purposes of subdivision (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including all of the following:

- (1) Ethics.
- (2) Federal law and regulation relating to mortgage origination.
- (3) State law and regulation relating to mortgage origination.

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) An individual shall not be considered to have passed a qualified written test administered pursuant to this section unless the individual achieves a test score of not less than 75 percent of correct answers to questions.

(e) An individual who fails the qualified written test may retake the test up to three consecutive times, although at least 30 days shall pass between each retesting.

(f) An applicant who fails three consecutive retests shall wait at least six months before retesting.

(g) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

SEC. 28. Section 22109.4 is added to the Financial Code, to read:

22109.4. (a) A mortgage loan originator shall comply with the requirements of this section on or before December 31 of every year.

(b) The minimum standards for license renewal for a mortgage loan originator shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under Section 22109.1.

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in Section 22109.5.

(3) The mortgage loan originator, or the finance lender or broker employing the mortgage loan originator, has paid all required fees for renewal of the license as provided in Section 22107.

(c) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire at midnight on January 31, except as provided in subdivision (h) of Section

22109.5. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

SEC. 29. Section 22109.5 is added to the Financial Code, to read:

22109.5. (a) A licensed mortgage loan originator shall complete at least eight hours of continuing education approved in accordance with subdivision (b). The continuing education shall include at least the following:

- (1) Three hours of instruction on federal law and regulations.
- (2) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.
- (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Continuing education may be offered in a classroom, online, and by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) Except as provided in subdivision (i), a licensed mortgage loan originator:

- (1) May only receive credit for a continuing education course in the year in which the course is taken.
- (2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual

continuing education requirement at the rate of two hours credit for every one hour taught.

(g) A person who has successfully completed continuing education requirements approved by the Nationwide Mortgage Licensing System and Registry for any state other than California shall be granted credit toward completion of continuing education requirements in California.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person meeting the requirements of paragraphs (1) and (3) of subdivision (b) of Section 22109.4 may correct any deficiency in continuing education as established by rule or regulation of the commissioner.

SEC. 30. Section 22109.6 is added to the Financial Code, to read:

22109.6. In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the commissioner may establish by rule, regulation, or order, requirements as necessary, including, but not limited to, the following:

(a) Background information for the following:

- (1) Criminal history through fingerprint or other databases.
- (2) Civil or administrative records.
- (3) Credit history.

(4) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.

(b) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry.

(c) The setting or resetting as necessary of renewal or reporting dates.

(d) Requirements for amending or surrendering a license or any other activities as the commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

SEC. 30.5. Section 22112 of the Financial Code is amended to read:

22112. (a) A licensee shall maintain a surety bond in accordance with this subdivision in a minimum amount of twenty-five thousand dollars (\$25,000). The bond shall be payable to the commissioner and issued by an insurer authorized to do business in this state. An original surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner within 10 days of execution. For licensees with multiple licensed locations, only one surety bond is required. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with the requirements of this division.

(b) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery of any action on the bond, the licensee shall file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license.

(c) The commissioner may by rule require a higher bond amount for a licensee employing one or more mortgage loan originators, based on the dollar amount of residential mortgage loans originated by that licensee and any mortgage loan originators employed by that licensee. Every mortgage loan originator employed by the licensee shall be covered by the surety bond.

SEC. 31. Section 22151 of the Financial Code is amended to read:

22151. (a) A finance lender license, broker license, and the license of every mortgage loan originator employed by a lender or finance broker, along with any currently effective order of the commissioner approving a different name pursuant to Section 22155, shall be conspicuously posted in the place of business authorized by the license.

(b) A license is not transferable or assignable. A license issued to a partnership or a limited partnership is not transferred or assigned within the meaning of this section by the death, withdrawal, or admission of a partner, general partner, or limited

partner, unless the death, withdrawal, or admission dissolves the partnership to which the license was issued.

SEC. 32. Section 22152 of the Financial Code is amended to read:

22152. A finance lender or broker licensee shall maintain only one place of business under a duplicate or original license issued pursuant to Section 22101 or 22102. The commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this division governing an original issuance of a license.

SEC. 33. Section 22153 of the Financial Code is amended to read:

22153. (a) If a finance lender or broker licensee seeks to change its place of business to a street address other than that designated in its license, the licensee shall provide notice to the commissioner at least 10 days prior to the change. The commissioner shall notify the licensee within 10 days if the commissioner disapproves the change, and if the commissioner does not notify the licensee of disapproval within 10 days, the change in address shall be deemed approved. The commissioner may require an applicant to submit its application to change its place of business through the Nationwide Mortgage Licensing System and Registry.

(b) If notice is not given at least 10 days prior to the change of a street address of a place of business, as required by subdivision (a), or notice is not given at least 10 days prior to engaging in business at a new location, as required by Section 22102, the commissioner may assess a civil or administrative penalty on the licensee not to exceed five hundred dollars (\$500).

SEC. 34. Section 22154 of the Financial Code is amended to read:

22154. (a) No licensee shall conduct the business of making loans under this division within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as is authorized in writing by the commissioner upon the commissioner's finding that the character of the other business is such that the granting of the authority would not facilitate evasions of this division or of the rules and regulations made pursuant to this division. An authorization once granted remains in effect until revoked by the

commissioner. The commissioner may authorize the other business through the Nationwide Mortgage Licensing System and Registry.

(b) The products or services of an affiliated corporation of the licensee that is a supervised financial institution, or a parent or subsidiary of a supervised financial institution that is an affiliate of the licensee, may be provided, offered, or sold at the licensed location of the licensee without authorization by the commissioner pursuant to subdivision (a) if (1) the activity is not prohibited by, or in violation of, the laws applicable to the affiliate or supervised financial institution, and (2) the products and services are not offered and sold in a manner that restricts the ability of the borrower or customer to individually select or reject a product or service that is offered.

(c) The following definitions govern the construction of this section:

(1) “Affiliated” or “affiliate” means the following: A corporation is an affiliate of, or a corporation is affiliated with, another specified corporation if it directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other specified corporation.

(2) “Supervised financial institution” means any commercial bank, industrial bank, credit card bank, trust company, savings and loan association, savings bank, credit union, California finance lender, residential mortgage lender or servicer, or insurer, provided that the institution is subject to supervision by an official or agency of this state or of the United States.

SEC. 35. Section 22155 of the Financial Code is amended to read:

22155. No finance lender, broker, or mortgage loan originator licensee shall transact the business licensed or make any loan provided for by this division under any other name or at any other place of business than that named in the license except pursuant to a currently effective written order of the commissioner authorizing the other name or other place of business. The commissioner’s order, while effective, shall be deemed to amend the original license issued pursuant to Section 22105 or 22109.1. Notwithstanding any provision of this section, a licensee may make any loan and engage in any other business provided for by this division, other than the business described in subdivision (b) of

Section 22154, at a place other than the licensed location under either of the following conditions:

(a) The borrower requests, either orally or in writing, that a loan be initiated or made at a location other than the licensee's licensed location. The use by the licensee of a preprinted solicitation form returned to the licensee by the borrower shall not constitute a request by the borrower that a loan be initiated or made at a location other than the licensee's licensed location.

(b) The licensee makes a solicitation or advertises for, or makes an offer of, a loan displayed on "home pages" or similar methods by the licensee on the Internet, the World Wide Web, or similar proprietary or common carrier electronic systems, and the prospective borrower may transmit information over these electronic systems to the licensee in connection with the licensee's offer to make a loan.

SEC. 36. Section 22156 of the Financial Code is amended to read:

22156. Finance lender, broker, and mortgage loan originator licensees shall keep and use in their business, books, accounts, and records which will enable the commissioner to determine if the licensee is complying with the provisions of this division and with the rules and regulations made by the commissioner. On any loan secured by real property in which loan proceeds were disbursed to an independent escrowholder, the licensee shall retain records and documents as set forth by rules of the commissioner adopted pursuant to Section 22150. Upon request of the commissioner, licensees shall file an authorization for disclosure to the commissioner of financial records of the licensed business pursuant to Section 7473 of the Government Code.

SEC. 37. Section 22157 of the Financial Code is amended to read:

22157. Finance lender, broker, and mortgage loan originator licensees shall preserve their books, accounts, and records, including cards used in the card system, if any, for at least three years after making the final entry on any loan recorded therein.

SEC. 38. Section 22159 of the Financial Code is amended to read:

22159. (a) Each finance lender and broker licensee shall file an annual report with the commissioner, on or before the 15th day of March, giving the relevant information that the commissioner

reasonably requires concerning the business and operations conducted by the licensee within the state during the preceding calendar year for each licensed place of business. The individual annual reports filed pursuant to this section shall be made available to the public for inspection except, upon request in the annual report to the commissioner, the balance sheet contained in the annual report of a sole proprietor or any other nonpublicly traded persons. “Nonpublicly traded person” for purposes of this section means persons with securities owned by 35 or fewer individuals. The report shall be made under oath and in the form prescribed by the commissioner.

(b) A licensee shall make other special reports that may be required by the commissioner.

(c) The commissioner may require a licensee that employs one or more mortgage loan originators to submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in the form and shall contain the information as the Nationwide Mortgage Licensing System and Registry may require.

(d) The commissioner may by rule or order require a mortgage loan originator to submit reports of condition to the Nationwide Mortgage Licensing System and Registry, in lieu of the reports of condition required of his or her employer pursuant to subdivision (c).

SEC. 39. Section 22168 of the Financial Code is amended to read:

22168. (a) The commissioner may, after appropriate notice and opportunity for hearing, suspend for a period not to exceed 12 months or bar a person from any position of employment with a licensee if the commissioner finds that the person has willfully used or claimed without authority a designation or certification of special education, practice, or skill that the person has not attained, or willfully held out to the public a confusingly similar designation or certification for the purpose of misleading the public regarding his or her qualifications or experience.

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code). Upon receiving a request, the matter shall be set for hearing to commence within 30 days after receipt

unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of the notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to subdivision (a), the person who is the subject of the proposed order is immediately prohibited from engaging in any activities subject to licensure under this division.

(d) Persons suspended or barred under this section are prohibited from participating in any business activity of a licensed finance lender, broker, or mortgage loan originator, and from engaging in any business activity on the premises where a licensed finance lender, broker, or mortgage loan originator is conducting its business. This subdivision shall not be construed to prohibit suspended or barred persons from having their personal transactions processed by a licensed finance lender, broker, or mortgage loan originator.

SEC. 40. Section 22169 of the Financial Code is amended to read:

22169. (a) The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or bar from any position of employment, management, or control any finance lender, broker, mortgage loan originator, or any other person, if the commissioner finds either of the following:

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the finance lender, broker, or mortgage loan originator, or to the public.

(2) That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this division.

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Division 3 of Title 2 of the Government Code). Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any activities subject to licensure under the law.

(d) Persons suspended or barred under this section are prohibited from participating in any business activity of a finance lender, broker, or mortgage loan originator, and from engaging in any business activity on the premises where a finance lender, broker, or mortgage loan originator is conducting business.

SEC. 40.5. Section 22170 of the Financial Code is amended to read:

22170. (a) It is unlawful for any person to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

(b) It is unlawful for any person to knowingly make an untrue statement to the commissioner or the Nationwide Mortgage Licensing System and Registry during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

SEC. 41. Section 22171 of the Financial Code is amended to read:

22171. (a) The commissioner shall apply the guidance on nontraditional mortgage product risks published on November 14, 2006, by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, and the Statement on Subprime Mortgage Lending published on July

17, 2007, by the aforementioned entities and the National Association of Consumer Credit Administrators, to licensees.

(b) The commissioner may adopt emergency and final regulations to clarify the application of this section as soon as possible.

(c) A finance lender or broker licensee shall adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in the documents described in subdivision (a). A mortgage loan originator licensee shall adhere to policies and procedures developed by its employer in accordance with this division and applicable federal law and regulation.

SEC. 41.5. Section 22172 is added to the Financial Code, to read:

22172. (a) The commissioner may do one or more of the following:

(1) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license for a violation of this division, or any rules or regulations adopted thereunder.

(2) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an applicant or licensee fails at any time to meet the requirements of Section 22109.1 or 22109.4, or withholds information or makes a material misstatement in an application for a license or license renewal.

(3) Order restitution against a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator for a violation of this division.

(4) Impose fines on a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

(5) Issue orders or directives to mortgage loan originators under this division as follows:

(A) Order or direct a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.

(B) Order or direct a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator to cease any harmful activities or violations of this division, including immediate temporary orders to desist and refrain.

(C) Enter immediate temporary orders to cease business under a license issued pursuant to the authority granted under Section 22100 if the commissioner determines that the license was erroneously granted or the mortgage loan originator is currently in violation of this division.

(D) Order or direct any other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

SEC. 42. Section 22347 is added to the Financial Code, to read:

22347. The unique identifier of any licensed mortgage loan originator shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or Internet Web sites, and any other documents as established by rule, regulation, or order of the commissioner.

SEC. 43. Section 22700 of the Financial Code is amended to read:

22700. (a) Finance lender and broker licenses issued under this division shall remain in effect until they are surrendered, revoked, or suspended.

(b) Mortgage loan originator licenses issued under this division shall be renewed annually upon the payment of an annual assessment, and if renewed by the licensee, shall remain in effect until they are surrendered, revoked, or suspended.

(c) Surrender of a license becomes effective 30 days after receipt of an application to surrender the license or within a shorter period of time that the commissioner may determine, unless a revocation

or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the surrender is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, surrender of a license becomes effective at the time and upon the conditions that the commissioner determines.

SEC. 44. Section 22755 is added to the Financial Code, to read:

22755. It is a violation of this division for a mortgage loan originator to do any of the following:

(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engage in any unfair or deceptive practice toward any person.

(c) Obtain property by fraud or misrepresentation.

(d) Solicit or enter into a contract with a borrower that provides in substance that the mortgage loan originator may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower.

(e) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.

(f) Conduct any business covered by this division without holding a valid license as required under this division, or assist or aide and abet any person in the conduct of business under this division without a valid license as required under this division.

(g) Fail to make disclosures as required by this division and any other applicable state or federal law, including regulations thereunder.

(h) Fail to comply with this division or rules or regulations promulgated under this division, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this division.

(i) Make, in any manner, any false or deceptive statement or representation including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising.

(j) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with

any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the commissioner or another governmental agency.

(k) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(l) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this division.

(m) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.

(n) Fail to truthfully account for moneys belonging to a party of a residential mortgage loan transaction.

SEC. 45. Section 50002 of the Financial Code is amended to read:

50002. (a) No person shall engage in the business of making residential mortgage loans or servicing residential mortgage loans, in this state, without first obtaining a license from the commissioner in accordance with the requirements of Chapter 2 (commencing with Section 50120) or Chapter 3 (commencing with Section 50130), and any rules promulgated by the commissioner under this law, unless a person or transaction is excepted from a definition or exempt from licensure by a provision of this law or a rule of the commissioner.

(b) An employee of a licensee or of a person exempt from licensure is not required to be licensed when acting within the scope of his or her employment and shall be exempt from any other law from which his or her employer is exempt, except that an individual who meets the definition of a mortgage loan originator in Section 50003.5 shall be subject to this division.

(c) The following persons are exempt from subdivision (a):

(1) Any bank, trust company, insurance company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the

United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.

(2) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state.

(3) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized to transact business in this state.

(4) A person engaged solely in business, commercial, or agricultural mortgage lending.

(5) A wholly owned service corporation of a savings and loan association or savings bank organized under the laws of this state or the wholly owned service corporation of a federally chartered savings and loan association or savings bank that is authorized to transact business in this state.

(6) An agency or other instrumentality of the federal government, or state or municipal government.

(7) An employee or employer pension plan making residential mortgage loans only to its participants, or a person making those loans only to its employees or the employees of a holding company, or an owner who controls that person, affiliate, or subsidiary of that person.

(8) A person acting in a fiduciary capacity conferred by the authority of a court.

(9) A real estate broker licensed under California law, when making, arranging, selling, or servicing a residential loan.

(10) A California finance lender or broker licensed under Division 9 (commencing with Section 22000), when acting under the authority of that license.

(11) A trustee under a deed of trust pursuant to the Civil Code, when collecting delinquent loan payments, interest, or other loan amounts, or performing other acts in a judicial or nonjudicial foreclosure proceeding.

(12) A mortgage loan originator who has obtained a license under Chapter 3.5 (commencing with Section 50140), provided that the mortgage loan originator is employed by a residential mortgage lender or servicer.

(13) A registered mortgage loan originator described in subdivision (e).

(d) An individual, unless specifically exempted under subdivision (e), shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license in accordance with the requirements of Chapter 3.5 (commencing with Section 50140) and any rules promulgated by the commissioner under that chapter. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) A registered mortgage loan originator is exempt from licensure under subdivisions (a) and (d), when he or she is employed by a depository institution, a subsidiary of a depository institution that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration.

(f) A loan processor or underwriter who is an independent contractor employed engaged by a residential mortgage lender or servicer may not perform the activities of a loan processor or underwriter under this division unless the independent contractor loan processor or underwriter obtains and maintains a license under Section 50120.

SEC. 46. Section 50002.5 is added to the Financial Code, to read:

50002.5. (a) Every licensee engaging in the business of making, servicing, or making and servicing residential mortgage loans shall require that every mortgage loan originator employed or compensated by that licensee obtains and maintains a mortgage loan originator license from the commissioner under this division or Division 9 (commencing with Section 22000), or has first obtained a license endorsement from the commissioner of Real Estate pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code.

(b) A residential mortgage lender or servicer shall not employ a mortgage loan originator whose license or license endorsement has lapsed.

(c) A residential mortgage lender or servicer may not make or broker a residential mortgage loan unless that loan is negotiated by or applied for through a licensed mortgage loan originator.

(d) Every licensee engaged in the business of making, servicing, or making and servicing residential mortgage loans and every mortgage loan originator licensed under this division shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) No mortgage loan originator licensed under this division and employed by a licensed residential mortgage lender or residential mortgage servicer shall engage in any activity that is not an authorized activity for a licensed residential mortgage lender or residential mortgage servicer pursuant to this division.

SEC. 47. Section 50003 of the Financial Code is amended to read:

50003. (a) “Annual audit” means a certified audit of the licensee’s books, records, and systems of internal control performed by an independent certified public accountant in accordance with generally accepted accounting principles and generally accepted auditing standards.

(b) “Borrower” means the loan applicant.

(c) “Buy” includes exchange, offer to buy, or solicitation to buy.

(d) “Commissioner” means the Commissioner of Corporations.

(e) “Control” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a licensee under this division, whether through voting or through the ownership of voting power of an entity that possesses voting power of the licensee, or otherwise. Control is presumed to exist if a person, directly or indirectly, owns, controls, or holds 10 percent or more of the voting power of a licensee or of an entity that owns, controls, or holds, with power to vote, 10 percent or more of the voting power of a licensee. No person shall be deemed to control a licensee solely by reason of his or her status as an officer or director of the licensee.

(f) “Depository institution” has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(g) “Engage in the business” means the dissemination to the public, or any part of the public, by means of written, printed, or electronic communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, of any information relating to the

making of residential mortgage loans, the servicing of residential mortgage loans, or both. “Engage in the business” also means, without limitation, making residential mortgage loans or servicing residential mortgage loans, or both.

(h) “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(i) “In this state” includes any activity of a person relating to making or servicing a residential mortgage loan that originates from this state and is directed to persons outside this state, or that originates from outside this state and is directed to persons inside this state, or that originates inside this state and is directed to persons inside this state, or that leads to the formation of a contract and the offer or acceptance thereof is directed to a person in this state (whether from inside or outside this state and whether the offer was made inside or outside the state).

(j) “Institutional investor” means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing, including, by way of example, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial bank or industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurance company, or subsidiary or affiliate of one of the preceding entities, doing business under the authority of or in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Trustees of pension, profit-sharing, or welfare funds, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000), except pension, profit-sharing, or welfare funds of a licensee or its affiliate,

self-employed individual retirement plans, or individual retirement accounts.

(4) A corporation or other entity with outstanding securities registered under Section 12 of the federal Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation or entity, provided that the purchaser represents either of the following:

(A) That it is purchasing for its own account for investment and not with a view to, or for sale in connection with, any distribution of a promissory note.

(B) That it is purchasing for resale pursuant to an exemption under Rule 144A (17 C.F.R. 230.144A) of the Securities and Exchange Commission.

(5) An investment company registered under the Investment Company Act of 1940; or a wholly owned and controlled subsidiary of that company, provided that the purchaser makes either of the representations provided in paragraph (4).

(6) A residential mortgage lender or servicer licensed to make residential mortgage loans under this law or an affiliate or subsidiary of that person.

(7) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer or agent of that person, if that person is acting within the scope of authority granted by that license or an affiliate or subsidiary controlled by that broker or dealer, in connection with a transaction involving the offer, sale, purchase, or exchange of one or more promissory notes secured directly or indirectly by liens on real property or a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, and the offer and sale of those securities is qualified under the California Corporate Securities Law of 1968 or registered under federal securities laws, or exempt from qualification or registration.

(8) A licensed real estate broker selling the loan to an institutional investor specified in paragraphs (1) to (7), inclusive, or paragraph (9) or (10).

(9) A business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 or a Small Business Investment Company licensed by the United States Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.

(10) A syndication or other combination of any of the foregoing entities that is organized to purchase a promissory note.

(11) A trust or other business entity established by an institutional investor for the purpose of issuing or facilitating the issuance of securities representing undivided interests in, or rights to receive payments from or to receive payments primarily from, a pool of financial assets held by the trust or business entity, provided that all of the following apply:

(A) The business entity is not a sole proprietorship.

(B) The pool of assets consists of one or more of the following:

(i) Interest-bearing obligations.

(ii) Other contractual obligations representing the right to receive payments from the assets.

(iii) Surety bonds, insurance policies, letters of credit, or other instruments providing credit enhancement for the assets.

(C) The securities will be either one of the following:

(i) Rated as “investment grade” by Standard and Poor’s Corporation or Moody’s Investors Service, Inc. “Investment grade” means that the securities will be rated by Standard and Poor’s Corporation as AAA, AA, A, or BBB or by Moody’s Investors Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings with “+” or “—” designation or other variations that occur within those ratings.

(ii) Sold to an institutional investor.

(D) The offer and sale of the securities is qualified under the California Corporate Securities Law of 1968 or registered under federal securities laws, or exempt from qualification or registration.

(k) “Institutional lender” means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing, including, by way of example, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial loan company, or insurance company, or service or investment company that is wholly owned and controlled by one of the preceding entities, doing business

under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(4) A residential mortgage lender or servicer licensed to make residential mortgage loans under this law.

(l) “Law” means the California Residential Mortgage Lending Act.

(m) “Lender” means a person that (1) is an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, (2) directly makes residential mortgage loans, and (3) makes the credit decision in the loan transactions.

(n) “Licensee” means, depending on the context, a person licensed under Chapter 2 (commencing with Section 50120), Chapter 3 (commencing with Section 50130), or Chapter 3.5 (commencing with Section 50140).

(o) “Makes or making residential mortgage loans” or “mortgage lending” means processing, underwriting, or as a lender using or advancing one’s own funds, or making a commitment to advance one’s own funds, to a loan applicant for a residential mortgage loan.

(p) “Mortgage loan,” “residential mortgage loan,” or “home mortgage loan” means a federally related mortgage loan as defined in Section 3500.2 of Title 24 of the Code of Federal Regulations, or a loan made to finance construction of a one-to-four family dwelling.

(q) “Mortgage servicer” or “residential mortgage loan servicer” means a person that (1) is an approved servicer for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, and (2) directly services or offers to service mortgage loans.

(r) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by

the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(s) “Net worth” has the meaning set forth in Section 50201.

(t) “Own funds” means (1) cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on a lender’s financial statements, whether secured or unsecured, or (2) a lender’s affiliate’s cash, corporate capital, or warehouse credit lines at commercial banks or other sources that are liability items on the affiliate’s financial statements, whether secured or unsecured. “Own funds” does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of that loan.

(u) “Person” means a natural person, a sole proprietorship, a corporation, a partnership, a limited liability company, an association, a trust, a joint venture, an unincorporated organization, a joint stock company, a government or a political subdivision of a government, and any other entity.

(v) “Residential real property” or “residential real estate” means real property located in this state that is improved by a one-to-four family dwelling.

(w) “SAFE Act” means the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).

(x) “Service” or “servicing” means receiving more than three installment payments of principal, interest, or other amounts placed in escrow, pursuant to the terms of a mortgage loan and performing services by a licensee relating to that receipt or the enforcement of its receipt, on behalf of the holder of the note evidencing that loan.

(y) “Sell” includes exchange, offer to sell, or solicitation to sell.

(z) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

(aa) For purposes of Sections 50142, 50143, and 50145, “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

SEC. 48. Section 50003.5 is added to the Financial Code, to read:

50003.5. (a) “Mortgage loan originator” means an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

(b) Mortgage loan originator does not include any of the following:

(1) An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator, except as provided in subdivision (c) of Section 50003.6. The term “administrative or clerical tasks” means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(2) An individual who solely renegotiates terms for existing mortgage loans held or serviced by his or her employer and who does not otherwise act as a mortgage loan originator, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that the SAFE Act requires that employee to be licensed as a mortgage loan originator under state laws implementing the SAFE Act.

(3) An individual that is solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code.

(4) An individual licensed as a mortgage loan originator pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code and the SAFE Act.

(c) “Registered mortgage loan originator” means any individual who is all of the following:

(1) Meets the definition of mortgage loan originator.

(2) Is an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration.

(3) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(d) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a mortgage loan originator licensed by the state or a registered mortgage loan originator.

SEC. 49. Section 50003.6 is added to the Financial Code, to read:

50003.6. (a) A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a loan originator shall not be required to be licensed as a mortgage loan originator.

(b) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(c) An independent contractor may not engage in the activities of a loan processor or underwriter for a residential mortgage loan unless the independent contractor loan processor or underwriter obtains and maintains a residential mortgage lender or residential mortgage servicer license and a mortgage loan originator license under this division.

SEC. 50. Section 50120 of the Financial Code is amended to read:

50120. (a) A residential mortgage lender shall file an application for licensure under this chapter with the commissioner to make or service residential mortgage loans in this state.

(b) A licensee may not engage in the business as a residential mortgage lender under a name other than the name that appears on the license, or a legally assumed name disclosed either in the application or in an amendment to the application, which shall be reflected on the license.

(c) A licensee may not make or service residential mortgage loans secured by real property pursuant to the authority of a license, or an exemption from licensure, under the Real Estate Law.

(d) The commissioner may, pursuant to Section 50321, order a licensee to cease any other business conducted at any location where the licensee operates under the authority of a residential mortgage lender license, if the commissioner finds that the conduct of that business has facilitated evasions of this division or the rules adopted pursuant to this division, or that the conduct of that business is in violation of any law to which that business is subject.

(e) A license issued for a business location outside this state shall constitute an agreement by the licensee to, at the sole discretion of the commissioner, either (1) make the licensee's books, accounts, papers, records, and files available to the commissioner or the commissioner's representatives in this state within 10 calendar days of a request from the commissioner or, (2) pay the reasonable expenses for travel, meals, and lodging of the commissioner or the commissioner's representatives incurred during an investigation or examination made at the licensee's location outside this state.

(f) The commissioner may, by rule, require an applicant for a residential mortgage lender or servicer license or a residential mortgage lender or servicer licensee to make some or all filings with the commissioner through the Nationwide Mortgage Licensing System and Registry.

(g) The commissioner may, by rule, require licensees to pay assessments through the Nationwide Mortgage Licensing System and Registry.

SEC. 51. Section 50121 of the Financial Code is amended to read:

50121. The commissioner shall issue a residential mortgage lender license upon the satisfaction of all of the following:

(a) The filing with the commissioner of a complete and executed application for licensure, which may, at the discretion of the commissioner, include background and experience disclosures required by any of the uniform application forms of the Nationwide Mortgage Licensing System and Registry.

(b) The payment of a nonrefundable investigation fee of one hundred dollars (\$100), plus the cost of fingerprint processing and clearance, and an application filing fee of nine hundred dollars (\$900).

(c) An investigation of the statements required by Section 50124 based upon which the commissioner is able to issue findings that

the financial responsibility, criminal records (verified by fingerprint, at the discretion of the commissioner), experience, character, and general fitness of the applicant and of the partners or members thereof, if the applicant is a partnership or association, and of the principal officers and directors thereof, if the license applicant is a corporation, support a finding that the business will be operated honestly, fairly, and in accordance with the requirements of this division.

SEC. 52. Section 50122 of the Financial Code is amended to read:

50122. (a) Except as provided in Section 50120, the information provided on an application for a residential mortgage lender, residential mortgage servicer, or residential mortgage lender and servicer license shall be sworn testimony on a form prescribed by the commissioner. If an applicant proposes to engage in business as a residential mortgage loan servicer as well as a residential mortgage lender, this information shall be set forth in the application. The commissioner may issue a license under this chapter to engage in business as a residential mortgage lender or to engage in business as a residential mortgage lender and residential mortgage loan servicer. A person filing an application under this chapter to engage in business as a residential mortgage lender and a residential mortgage loan servicer is not required to file an application under Chapter 3 (commencing with Section 50130).

(b) The application shall contain the name and complete business and residential address or addresses of the applicant. If the applicant is a partnership, association, corporation, or other entity, the application shall contain the names and complete business and residential addresses of each member, director, and principal officer. The application also shall include a description of the activities of the applicant in the detail and for the periods that the commissioner may require, including all of the following:

(1) A statement of financial solvency, noting the net worth requirements and supported by an audited financial statement prepared by an independent certified public accountant, and access to the supporting credit information as required by this division.

(2) A statement that the applicant or its members, directors, or principals, as appropriate, are at least 18 years of age. The statement may be made by providing each person's date of birth.

(3) Information as to the character, fitness, financial and business responsibility, background, experience, and criminal convictions of any of the following:

(A) Any person that owns or controls, directly or indirectly, 10 percent or more of any class of stock of the applicant.

(B) Any person that controls, directly or indirectly, the election of 25 percent or more of the members of the board of directors of an applicant.

(C) Any person or entity that significantly influences or controls the management of the applicant.

(4) A description of any disciplinary action filed under any other license through which the person conducts its business.

(5) A description of any adverse judgments entered in court actions filed by borrowers based upon allegations of fraud, misrepresentation, or dishonesty in the conduct of the person's business.

(6) A copy of the fidelity bond currently in effect.

(7) Other information as required by rule of the commissioner.

SEC. 53. Section 50123 of the Financial Code is amended to read:

50123. (a) A residential mortgage lender license shall remain in effect until suspended, surrendered, or revoked.

(b) A residential mortgage lender licensee that ceases to engage in the business regulated by this division and desires to no longer be licensed shall inform the commissioner in writing and, at that time, surrender the license and all other indicia of licensure to the commissioner. The licensee shall file a plan for the withdrawal from regulated business, and the plan shall include a timetable for the disposition of the business. The plan shall also include a closing audit, review, or other agreed upon procedures performed by an independent certified public accountant prescribed by rule or order of the commissioner. Upon receipt of the written notice and plan, the commissioner shall review the plan and, if satisfactory to the commissioner, shall accept the surrender of the license. A license is not surrendered until its tender is accepted in writing by the commissioner after a review, and a finding has been made on the licensee's plan required to be filed by this section, and a determination has been made that there is no violation of this law.

(c) A residential mortgage lender or servicer licensee may not surrender its license under this division and, under the authority

of a real estate license, subsequently engage in residential mortgage lending or servicing activities that are subject to this division, unless the licensee has been licensed under this division for a period of five years or more.

SEC. 54. Section 50124 of the Financial Code is amended to read:

50124. (a) A residential mortgage lender or servicer shall do all of the following:

(1) Maintain staff adequate to meet the requirements of this division, as prescribed by rule or order of the commissioner.

(2) Keep and maintain for 36 months from the date of final entry the business records and other information required by law or rules of the commissioner regarding any mortgage loan made or serviced in the course of the conduct of its business.

(3) File with the commissioner any report required under law or by rule or order of the commissioner.

(4) Disburse funds in accordance with its agreements and to make a good faith and reasonable effort to effect closing in a timely manner.

(5) Account or deliver to a person any personal property such as money, funds, deposit, check, draft, mortgage, other document, or thing of value, that has come into its possession and is not its property, or that it is not in law or equity entitled to retain under the circumstances, at the time that has been agreed upon or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to the accounting or delivery.

(6) File with the commissioner an amendment to its application prior to any material change in the information contained in the application for licensure, including, without limitation, the plan of operation. The commissioner shall, within 20 business days of receiving a completed amendment to the application, or within a longer time if agreed to by the licensee, approve or disapprove the effectiveness of the proposed amendment.

(7) Comply with the provisions of this division, and with any order or rule of the commissioner.

(8) Submit to periodic examination by the commissioner as required by this division.

(9) Advise the commissioner by amendment to its application of any material judgment filed against, or bankruptcy petition filed by, the licensee within five days of the filing.

(10) Notify the commissioner, in writing, prior to opening a branch office in this state or changing its business location or locations or its branch offices from which activities subject to this division are conducted.

(11) Comply with all applicable state and federal tax return filing requirements.

(12) Refrain from employing, or paying a commission or other fee to, a mortgage loan originator who is not licensed in this state, unless the individual is exempt from licensure.

(13) Refrain from committing a crime against the laws of any state or the United States, involving moral turpitude, misrepresentation, fraudulent or dishonest dealing, or fraud, and disclose to the commissioner any final judgment entered against it in a civil action upon grounds or allegations of fraud, misrepresentation, or deceit.

(14) Refrain from engaging in conduct that would be cause for denial of a license.

(15) Remain solvent.

(16) Proceed with due care and competence in performing any act for which it is required to hold a license under this division.

(17) Comply with any other requirement established by rule of the commissioner.

(b) The commissioner may require an applicant to submit a statement agreeing to comply with the requirements of this section.

SEC. 55. Section 50125 of the Financial Code is amended to read:

50125. The commissioner may refuse to issue a residential mortgage lender or servicer license if any of the following apply:

(a) The applicant is not in material compliance with a provision of this division or an order or rule of the commissioner.

(b) The commissioner cannot make the findings specified in subdivision (c) of Section 50121.

(c) A material requirement for issuance of a license has not been met.

SEC. 56. Section 50126 of the Financial Code is amended to read:

50126. (a) Upon reasonable notice and opportunity to be heard, the commissioner may deny an application for any of the following reasons:

(1) A false statement of a material fact has been made in the application.

(2) Any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last 10 years, (A) been convicted of, or pleaded nolo contendere to, a crime or (B) committed any act involving dishonesty, fraud, or deceit, if the crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

(3) The applicant or any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant, has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.

(4) The applicant employs a mortgage loan originator who is not licensed in this state, unless the mortgage loan originator is exempt from licensure.

(b) The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written notification of a deficiency in the application within 90 days of the date of the notification.

(c) The commissioner shall, within 60 days from the filing of a full and complete application for a license, including the receipt of background and investigative reports from the Department of Justice or other government agencies, and the payment of the fees required by Section 50121, issue either a residential mortgage lender or servicer license or a statement of issues prepared in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 57. Section 50128 of the Financial Code is amended to read:

50128. As used in this act, the term “principal officer” means an officer with direct responsibility for the conduct of the residential mortgage lender or servicer licensee’s or license applicant’s lending or servicing activities in this state.

SEC. 58. Section 50129 of the Financial Code is amended to read:

50129. (a) A residential mortgage lender or servicer licensed under this chapter may, under the authority of that license and subject to the provisions of this division, do both of the following:

(1) Engage as a principal in the business of buying from or selling to institutional investors residential mortgage loans by using or advancing one's own funds.

(2) Engage, pursuant to a written agency contract with an institutional lender specified in paragraph (1), (2), or (4) of subdivision (k) of Section 50003, in the business of soliciting, processing applications, or applying residential loan underwriting criteria, but not engage in the business of brokerage services pursuant to this subdivision, for residential mortgage loans for that lender, using or advancing the funds of that lender, provided that no fees or charges may be demanded or collected by the residential mortgage lender licensee for any performance or service, except fees demanded by, or collected on behalf of, the institutional lender, and that the licensee gives a written disclosure to the borrower, as soon as practicable but prior to loan closing, identifying the licensee and stating that the licensee is not the lender in the transaction but has contracted to provide soliciting, processing, or underwriting services for the lender. Separate schedules of the number and principal amount of the loans processed and underwritten shall be included in the licensee's annual report required by subdivision (a) of Section 50401.

(b) The act of soliciting other institutional lenders with whom a residential mortgage lender licensee has concluded an agency contract pursuant to paragraph (2) of subdivision (a) for placement of a loan upon declination of that loan by another institutional lender contracted under paragraph (2) of subdivision (a), constitutes brokerage services, and may be pursued by the licensee only following execution of a loan brokerage agreement with the borrower as provided in this division.

SEC. 59. Section 50130 of the Financial Code is amended to read:

50130. (a) A mortgage servicer shall file an application for licensure under this chapter with the commissioner to service mortgage loans in this state by satisfying the requirements of this chapter and the applicable provisions, as determined by the commissioner, of Chapter 2 (commencing with Section 50120).

(b) A mortgage servicer may apply for licensure by doing all of the following:

(1) Filing with the commissioner an application containing the information required by Section 50122, and any additional information the commissioner may require by rule.

(2) Paying the investigation and application fees required by Section 50121.

(3) Submitting any information required by Section 50124.

(4) Complying with the applicable provisions of Chapter 2 (commencing with Section 50120).

(c) A licensee may not make or service loans secured by real property pursuant to the authority of a license, or exemption from licensure, under the Real Estate Law.

(d) The commissioner may, pursuant to Section 50321, order a licensee to cease any other business conducted at any location where the licensee operates under the authority of a residential mortgage servicer license, if the commissioner finds that the conduct of that business has facilitated evasions of this division or the rules adopted pursuant to this division, or that the conduct of that business is in violation of any law to which that business is subject.

(e) A license for a business location outside this state shall constitute an agreement by the mortgage servicer to, at the discretion of the commissioner, either (1) make the licensee's books, accounts, papers, records, and files available to the commissioner or the commissioner's representatives in this state within 10 calendar days of a request from the commissioner or, (2) pay the reasonable expenses for travel, meals, and lodging of the commissioner or the commissioner's representatives incurred during an investigation or examination made at the licensee's location outside this state.

(f) The commissioner shall license a mortgage servicer upon completion of the investigation and issuance of the findings required by Section 50121, subject to Sections 50123, 50125, 50126, and 50127.

(g) A mortgage servicer licensed to service mortgage loans shall comply with all applicable requirements of California and federal law, including the Civil Code and Section 2609 of the federal Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. Sec. 2601 et seq.).

(h) A license shall remain in effect until suspended, surrendered, or revoked.

(i) The commissioner may require an applicant or licensee to make some or all filings with the commissioner through the Nationwide Mortgage Licensing System and Registry.

SEC. 60. Chapter 3.5 (commencing with Section 50140) is added to Division 20 of the Financial Code, to read:

CHAPTER 3.5. MORTGAGE LOAN ORIGINATORS

50140. (a) An applicant for a license as a mortgage loan originator shall apply by submitting the uniform form prescribed for that purpose by the Nationwide Mortgage Licensing System and Registry. The commissioner may require the submission of additional information or supporting documentation to the department.

(b) Section 461 of the Business and Professions Code shall not be applicable to the Department of Corporations when using a national uniform application adopted or approved for use by the Nationwide Mortgage Licensing System and Registry in connection with the SAFE Act.

(c) The commissioner shall, by rule, establish the timelines, fees, and assessments applicable to applicants for original mortgage loan originator licenses, license renewals, and license changes under this division.

(d) The commissioner may, by rule, require mortgage loan originator licensees to pay assessments through the Nationwide Mortgage Licensing System and Registry.

(e) In connection with an application for a license as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including the following:

(1) Fingerprint images and related information, for purposes of performing a federal, or both a state and federal, criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain both of the following:

(A) An independent credit report obtained from a consumer reporting agency.

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(f) The commissioner may ask the Nationwide Mortgage Licensing System and Registry to obtain state criminal history background check information on applicants described in subdivision (a) using the procedures set forth in subdivisions (g) and (h).

(g) If the Nationwide Mortgage Licensing System and Registry electronically submits fingerprint images and related information, as required by the Department of Justice, for an applicant for a mortgage loan originator license, for the purposes of obtaining information as to the existence and content of a record of state convictions and state arrests and to the existence and content of a record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal, the Department of Justice shall provide an electronic response to the Nationwide Mortgage Licensing System and Registry pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code, and shall provide the same electronic response to the commissioner.

(h) The Nationwide Mortgage Licensing System and Registry may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a). The Department of Justice shall provide the same electronic response to the commissioner.

(i) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

50141. The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation or set aside of such revocation shall not be deemed a revocation.

(b) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the

application for licensing and registration, or at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. For purposes of this subdivision, any pardon of a conviction shall not constitute a conviction.

(c) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

(d) The applicant has completed the prelicensing education requirement described in Section 50142.

(e) The applicant has passed a written test that meets the test requirements described in Section 50143.

(f) The applicant is employed by, and subject to the supervision of, a residential mortgage lender or servicer that has obtained a license from the commissioner pursuant to this division.

(g) The surety bond of the residential mortgage lender or servicer employing the applicant covers the activities of the applicant and meets the requirements of Section 50205.

50142. (a) An applicant for a mortgage loan originator license shall complete at least 20 hours of education approved in accordance with subdivision (b). The education shall include at least the following:

- (1) Three hours of instruction on federal law and regulations.
- (2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.
- (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subdivision (a), prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any prelicensing education course approved by the Nationwide Mortgage Licensing System and Registry that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Prelicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry for any state other than California shall be accepted as credit toward completion of prelicensing education requirements in California.

(f) An individual previously licensed under this chapter applying to be licensed again must prove that he or she has completed all of the continuing education requirements for the year in which that individual last held the license.

50143. (a) An applicant for a mortgage loan originator license shall pass a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry.

(b) A written test shall not be treated as a qualified written test for purposes of subdivision (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

- (1) Ethics.
- (2) Federal law and regulation relating to mortgage origination.
- (3) State law and regulation relating to mortgage origination.
- (4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) (1) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent of correct answers to questions.

(2) An individual who fails the qualified written test may retake the test up to three consecutive times, although at least 30 days shall pass between each retesting.

(3) An applicant who fails three consecutive retests shall wait at least six months before retesting.

(4) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

50144. (a) A mortgage loan originator shall comply with the requirements of this section on or before December 31 of every year.

(b) The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under Section 50141.

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in Section 50145.

(3) The mortgage loan originator, or the residential mortgage lender or servicer employing the mortgage loan originator, has paid all required fees for renewal of the license.

(4) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire at midnight on January 31, except as provided in Section 50145. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

50145. (a) A licensed mortgage loan originator shall complete at least eight hours of continuing education approved in accordance with subdivision (b). The continuing education shall include at least the following:

(1) Three hours of instruction on federal law and regulations.

(2) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subdivision (a), continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any education course approved by the Nationwide Mortgage Licensing System and

Registry that is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) Except as provided in subdivision (i), a licensed mortgage loan originator:

(1) May only receive credit for a continuing education course in the year in which the course is taken.

(2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(g) A person who has successfully completed continuing education requirements approved by the Nationwide Mortgage Licensing System and Registry for any state other than California shall be granted credit toward completion of continuing education requirements in California.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person meeting the requirements of paragraphs (1) and (3) of subdivision (b) of Section 50144 may correct any deficiency in continuing education as established by rule or regulation of the commissioner.

50146. In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the commissioner may establish by

rule, regulation, or order, requirements as necessary, including, but not limited to, the following:

- (a) Background checks for:
 - (1) Criminal history through fingerprint or other databases.
 - (2) Civil or administrative records.
 - (3) Credit history.
 - (4) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry or the commissioner.
- (b) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry.
- (c) The setting or resetting as necessary of renewal or reporting dates.
- (d) Requirements for amending or surrendering a license or any other activities as the commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

SEC. 61. Chapter 3.6 (commencing with Section 50150) is added to Division 20 of the Financial Code, to read:

CHAPTER 3.6. NATIONWIDE MORTGAGE LICENSING SYSTEM
AND REGISTRY

50150. (a) The commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this division.

(b) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the commissioner is authorized to waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this division and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(c) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from, and distributing information to, the Department of Justice or any governmental agency.

(d) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(e) The commissioner shall establish a process where applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

50151. (a) Except as otherwise provided in Section 1512 of the SAFE Act, the requirements under any federal law or the Information Practices Act (Chapter 1 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or the Information Practices Act.

(b) Information or material that is subject to a privilege or confidentiality under subdivision (a) shall not be subject to the following:

(1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the state.

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of that person, that privilege.

(c) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage

loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

50152. The commissioner shall report regularly violations of this division, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry, to the extent that information is public record.

SEC. 62. Section 50200 of the Financial Code is amended to read:

50200. (a) At the end of the licensee's fiscal year, but in no case more than 12 months after the last audit conducted pursuant to this section, each licensed residential mortgage lender or servicer shall cause its books and accounts to be audited by an independent certified public accountant. Beginning with all audits of business conducted after December 31, 1995, the audit shall be sufficiently comprehensive in scope to permit the expression of an opinion on the financial statements prepared in accordance with generally accepted accounting principles and shall be performed in accordance with generally accepted auditing standards. The audit shall include a reconciliation of the licensee's trust accounts as of the audit date.

(b) "Expression of an opinion" includes (1) an unqualified opinion, (2) a qualified opinion, (3) a disclaimer of opinion, or (4) an adverse opinion. If a financial statement, report, certificate, or opinion of the independent certified public accountant is in any way qualified, the commissioner may require the licensee to take any action that the commissioner deems appropriate to address the qualification. The commissioner may reject any financial statement, report, certificate, or opinion by notifying the licensee or other person required to make the filing of the rejection and the reason therefor. Within 30 days after the receipt of the notice, the licensee or other person shall correct the deficiencies. Failure to correct the deficiencies is a violation of this division. The commissioner shall retain a copy of all financial statements, reports, certificates, or opinions so rejected.

(c) If a qualified or adverse opinion is expressed or if an opinion is disclaimed, the reasons therefor must be fully explained.

(d) The audit report shall be filed with the commissioner within 105 days of the end of the licensee's fiscal year. The report filed with the commissioner shall be certified by the certified public

accountant conducting the audit. The commissioner may promulgate rules regarding late audit reports.

(e) If a licensee required to make an audit fails to cause an audit to be made, the commissioner may cause the audit to be made by an independent certified public accountant at the licensee's expense. The commissioner shall select the independent certified public accountant by advertising for bids or by other fair and impartial means that the commissioner establishes by rule. The commissioner may summarily revoke the license of a licensee who fails to file a certified financial statement prepared by an independent certified public accountant as required by this division or at the request of the commissioner.

(f) Audits conducted in accordance with the uniform single audit procedures of the United States Department of Housing and Urban Development may be submitted in fulfillment of the requirements of this section.

SEC. 63. Section 50201 of the Financial Code is amended to read:

50201. (a) A licensee issued a license for purposes of making or servicing residential mortgage loans, including a licensee employing one or more mortgage loan originators, shall continuously maintain a minimum tangible net worth at all times of two hundred fifty thousand dollars (\$250,000).

(b) Tangible net worth shall be computed in accordance with generally accepted accounting principles.

(c) The commissioner may promulgate rules or regulations with respect to the requirements for minimum net worth, as are necessary to accomplish the purposes of this division and comply with the SAFE Act.

SEC. 64. Section 50202 of the Financial Code is amended to read:

50202. (a) Escrow funds for a purpose authorized by the residential mortgage loan contract (1) shall be subject to and satisfy all applicable state and federal requirements, including Section 2609 of the federal Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. Sec. 2601 et seq.) and all applicable provisions of the Civil Code, (2) shall be maintained in a depository institution as described in subdivision (b), and (3) may not be commingled with a licensee's funds.

(b) Except as provided in subdivision (f), a trust account shall be placed in a non-interest-bearing account in a federally insured depository institution, a federal home loan bank, a federal reserve bank, or other similar government-sponsored enterprise, to be removed and used only for the following:

(1) Payments authorized by the borrower, allowed by the mortgage loan contract, or required by federal or state law.

(2) Refunds to the borrower.

(3) Transfer to another institution that is described in this subdivision.

(4) Forwarding to the appropriate servicer in case of a transfer of servicing.

(5) Any other purpose authorized by the residential mortgage loan contract.

(6) Compliance with a regulatory or court order.

(c) As used in this section, “trust funds” means funds collected by a licensee in connection with the making or servicing of a residential mortgage loan that the licensee holds on behalf of another.

(d) Notwithstanding any other provision of law, but subject to the limitations of Section 854, benefits accruing from the placement in a non-interest-bearing account of a commercial bank (including a national banking association) of funds received by a licensee who services mortgage loans under this law, shall inure to the licensee, unless otherwise agreed in writing by the licensee and the investor on whose behalf the licensee services the loan. A borrower shall receive at least 2 percent simple interest per annum on impound account payments covered by Section 2954.8 of the Civil Code.

(e) Trust funds are not subject to the enforcement of a money judgment arising out of a claim against the licensee or person acting as the servicing agent, and in no instance shall the trust funds be considered or treated as an asset of the licensee or person performing the functions of a residential mortgage lender or loan servicer.

(f) A licensee may, at the request of the owner of the trust funds, transfer the funds initially deposited in a non-interest-bearing trust account into an interest-bearing account in a federally insured depository institution if all of the following requirements are met:

(1) The account is in the name of the residential mortgage lender licensee in trust for the specified beneficiary.

(2) All of the funds in the account are federally insured.

(3) The funds in the account are kept separate and distinct from the funds of the licensee or funds of any other person for whom the licensee holds funds in trust.

(4) The licensee discloses to the person from whom the funds are received and the beneficiary of the account how interest will be calculated and paid, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) All interest earned on the account will be paid to the owner of the trust funds or the beneficiary.

SEC. 65. Section 50204 of the Financial Code is amended to read:

50204. A licensee may not do any of the following:

(a) Disburse the mortgage loan proceeds in a form other than direct deposit to the borrower's or borrower's designee's account, wire, bank or certified check, ACH funds transfer, or attorney's check drawn on a trust account. An entity may apply to the commissioner for a waiver of the requirements of this subdivision by demonstrating, in a letter application, that it has adopted or will adopt another method of disbursement of loan proceeds that will satisfy the purposes of this subdivision.

(b) Fail to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant.

(c) Accept fees at closing that are not disclosed to the borrower on the federal HUD-1 Settlement Statement.

(d) Commit an act in violation of Section 2941 of the Civil Code.

(e) Obtain or induce an agreement or other instrument in which blanks are left to be filled in after execution.

(f) Intentionally delay closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(g) Engage in fraudulent home mortgage underwriting practices.

(h) Make payment of any kind, whether directly or indirectly, to an in-house or fee appraiser of a government or private money lending agency, with which an application for a home mortgage has been filed, for the purpose of influencing the independent

judgment of the appraiser with respect to the value of real estate that is to be covered by the home mortgage.

(i) Engage in any acts in violation of Section 17200 or 17500 of the Business and Professions Code.

(j) Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which it is a party.

(k) Do an act, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealings.

(l) Sell more than eight loans in a calendar year made under the authority of this license to a person who is not an institutional investor.

(m) Commit an act in violation of Section 1695.13 of the Civil Code.

(n) Make or service a loan that is not a residential mortgage loan under the authority of the license.

(o) Commit an act in violation of Section 2948.5 of the Civil Code. Evidence of compliance with Section 2948.5 of the Civil Code may be evidenced by (1) a certification executed by the licensee, at no cost to the borrower, pursuant to Section 2015.5 of the Code of Civil Procedure, or (2) other evidence in the loan file acceptable to the commissioner.

(p) Make or broker a loan that is offered by, negotiated by, or applied for through a mortgage loan originator who is not licensed in this state through the Nationwide Mortgage Licensing System and Registry, unless the mortgage loan originator is exempt from licensure.

SEC. 66. Section 50205 of the Financial Code is amended to read:

50205. (a) A residential mortgage lender or servicer licensee shall maintain a surety bond in accordance with this subdivision. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with the requirements of this division. The bond shall be payable when the licensee fails to comply with a provision of this division and shall be in the amount of fifty thousand dollars (\$50,000), and may be increased by order of the commissioner to one hundred thousand dollars (\$100,000) upon a determination by the commissioner that the licensee is not

in compliance with any provision of this chapter or any rule or order adopted or issued by the commissioner to implement or enforce provisions of this chapter. The bond shall be payable to the commissioner and issued by an insurance company authorized to do business in this state. An original surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner within 10 days of its execution.

(b) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon the recovery of an action on the bond, the licensee shall file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license.

(c) The commissioner may by rule require a higher bond amount for a licensee employing one or more mortgage loan originators, based on the dollar amount of residential mortgage loans originated by that licensee and any mortgage loan originators employed by that licensee. Every mortgage loan originator employed by the licensee shall be covered by the surety bond.

SEC. 67. Section 50206 of the Financial Code is amended to read:

50206. (a) Prior to a change of control of the business of a licensee, the person wishing to acquire control shall submit an application to the commissioner and pay an investigation fee of one hundred dollars (\$100). The application shall contain the information that the commissioner, by rule, may prescribe as necessary to determine that the person meets the requirements of Section 50121.

(b) The commissioner shall approve or disapprove the proposed change of control of a licensee in accordance with the provisions of Section 50126.

(c) Upon notification by the commissioner that the change of control has been disapproved, the acquiring party shall immediately cease any activity subject to regulation under this division.

SEC. 68. Section 50208 of the Financial Code is amended to read:

50208. The license shall state the name of the licensee. If the licensee is a partnership, the license shall state the names of its

general partners. If the licensee is a corporation or an association, the license shall state the date and place of the corporation's incorporation or organization. If the licensee is a residential mortgage lender or servicer, the license shall state the address of the licensee's principal business location. The license shall state whether the licensee is licensed as a residential mortgage loan lender or servicer or as a mortgage loan originator.

SEC. 69. Section 50209 is added to the Financial Code, to read:

50209. The unique identifier of any licensed mortgage loan originator shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or Internet Web sites, and any other documents as established by rule, regulation, or order of the commissioner.

SEC. 70. Section 50302 of the Financial Code is amended to read:

50302. (a) As often as the commissioner deems necessary and appropriate, but at least once every 48 months, the commissioner shall examine the affairs of each residential mortgage lender and servicer licensee for compliance with this division. The commissioner shall appoint suitable persons to perform the examination. The commissioner and his or her appointees may examine the books, records, and documents of the licensee, and may examine the licensee's officers, directors, employees, or agents under oath regarding the licensee's operations. The commissioner may cooperate with any agency of the state or federal government, other states, agencies, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation. The commissioner may accept an examination conducted by one of these entities in place of an examination by the commissioner under this law, unless the commissioner determines that the examination does not provide information necessary to enable the commissioner to fulfill his or her responsibilities under this division.

(b) The commissioner shall provide a written statement of the findings of the examination, issue a copy of that statement to each licensee's principals, officers, or directors, and take appropriate steps to ensure correction of any violations of this division.

(c) Affiliates of a licensee are subject to examination by the commissioner on the same terms as the licensee, but only when reports from, or examination of, a licensee provides documented

evidence of unlawful activity between a licensee and affiliate benefiting, affecting, or arising from the activities regulated by this division.

(d) The residential mortgage lender or servicer licensee shall pay, and the commissioner shall assess, the reasonable expenses of any examination of the licensee and affiliates, consistent with the requirements of subdivision (c) of Section 50314.

(e) The statement of the findings of an examination shall belong to the commissioner and shall not be disclosed to anyone other than the licensee, law enforcement officials, or other state or federal regulatory agencies for further investigation and enforcement. Reports required of licensees by the commissioner under this division and results of examinations performed by the commissioner under this division are the property of the commissioner.

SEC. 71. Section 50307 of the Financial Code is amended to read:

50307. (a) Each residential mortgage lender or servicer licensee shall file a report with the commissioner annually, on or before the first day of March, giving the relevant information that the commissioner reasonably requires to make the calculation required by subdivision (a) of Section 50401. The report shall be made under oath and in the form prescribed by the commissioner.

(b) A licensee shall make any other special reports to the commissioner that the commissioner may, from time to time, require.

(c) If any licensed residential mortgage lender or servicer subject to this division fails to make a report required by law or by the commissioner, the commissioner may immediately cause the books, records, papers, and affairs of that licensee to be thoroughly examined.

SEC. 72. Section 50307.2 is added to the Financial Code, to read:

50307.2. The commissioner may require a licensee that employs one or more mortgage loan originators to submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

SEC. 72.5. Section 50310 of the Financial Code is amended to read:

50310. Nothing in this law shall preclude a person, other than a mortgage loan originator, whose license has been suspended or revoked, summarily or otherwise, from continuing to service residential mortgage loans pursuant to servicing contracts in existence at the time of the suspension for a reasonable transition period, as determined by the commissioner, after the date of the entry of the final decision in the case suspending or revoking the license.

SEC. 73. Section 50317 of the Financial Code is amended to read:

50317. (a) Any person who has been convicted of, or pleaded nolo contendere to any crime specified in subdivision (b) within the past 10 years or has been held liable in any civil action by final judgment or any administrative judgment by any public agency within the past seven years, of any of the provisions specified in subdivision (b), shall not serve as an officer, director, partner, shareholder controlling 10 percent or more of the ownership interests, trustee, or employee of a residential mortgage lender or residential mortgage loan servicer. This subdivision shall not apply to any person whose office, employment, ownership interest, or other participation in the business of a licensed residential mortgage lender or residential mortgage loan servicer commenced prior to January 1, 1995, or whose criminal conviction, plea, or judgment occurred prior to January 1, 1995.

(b) Subdivision (a) applies to criminal convictions of, pleas of nolo contendere to, or civil or administrative judgments entered for offenses including the following:

(1) Offenses specified in Chapter 18 (commencing with Section 3350) of Division 1.

(2) Offenses specified in Article 4 (commencing with Section 5300) of Chapter 1 of Division 2.

(3) Offenses specified in Article 8 (commencing with Section 14750) of Chapter 4 of Division 5.

(4) Offenses specified in Chapter 7 (commencing with Section 17700) of Division 6.

(5) Offenses specified in Chapter 6 (commencing with Section 18435) of Division 7.

(6) Offenses specified in provisions of the laws of the United States added or amended by the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Public Law 101-73).

(7) Offenses involving robbery, burglary, theft, embezzlement, fraud, fraudulent conversion or misappropriation of property, forgery, bookmaking, receiving stolen property, counterfeiting, extortion, checks, credit cards, or computer violations specified in Section 502 of the Penal Code. For the purpose of this section, but not Section 50318, an offense does not include a conviction for which the person has obtained a certificate of rehabilitation from a court of competent jurisdiction under Section 1203.4 or 4852.13 of the Penal Code or a similar certificate of rehabilitation obtained in a foreign jurisdiction.

(c) On and after January 1, 1995, any officer, director, or other person who seeks a controlling ownership interest of 10 percent or more in the business of a licensed residential mortgage lender or residential mortgage loan servicer shall, as a condition to obtaining that interest or participation, authorize the commissioner to have access to that person's state summary criminal history information, as defined in Section 11105 of the Penal Code, for purposes of determining whether the person has a prior conviction of, or pleaded nolo contendere to, a criminal offense specified in subdivision (b).

(d) Any state summary criminal history information obtained pursuant to this section shall be kept confidential and no recipient shall disclose the contents other than for the purpose of acquisition of an ownership interest in or other participation in the business of a licensed residential mortgage lender or residential mortgage loan servicer.

(e) Any person who knowingly violates subdivision (a), including, but not limited to, any residential mortgage lender or residential mortgage loan servicer who permits an ownership interest in or other participation in the business of a residential mortgage lender or residential mortgage loan servicer in violation of subdivision (a) shall, upon conviction, be subject to punishment as set forth in Section 50500.

(f) Nothing in this section shall be construed to permit the reinstatement of any person barred by the commissioner pursuant

to Section 50320 nor to prohibit the commissioner from bringing any action pursuant to Section 50320.

(g) If any provision of this section or the application of this section to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(h) For purposes of this section, the term “employee” means (1) a mortgage loan originator, including a loan officer or other individual who negotiates agreements with the public, or (2) an individual with access to or responsibility for trust funds held by the licensee.

SEC. 74. Section 50318 of the Financial Code is amended to read:

50318. (a) The commissioner may, after appropriate notice and opportunity for hearing, by order censure or suspend for a period not exceeding 12 months, or bar from any position of employment, management, or control any residential mortgage lender, residential mortgage loan servicer, or mortgage loan originator, or any other person, if the commissioner finds either of the following:

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, and (A) the violation was either known or should have been known by the person committing or causing it, or (B) the violation has caused material damage to the residential mortgage lender, residential mortgage loan servicer, mortgage loan originator, or to the public.

(2) That the person (A) has been convicted of or pleaded nolo contendere to any crime, or (B) has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense specified in subdivision (b) of Section 50317, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this division.

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5

(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code). Upon receiving a request, the matter shall be set for hearing to commence within 30 days after receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of the notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any activities subject to licensure under the law.

(d) Persons suspended or barred under this section are prohibited from participating in any business activity of a licensed residential mortgage lender, residential mortgage loan servicer, or mortgage loan originator and from engaging in any business activity on the premises where a licensed residential mortgage lender, residential mortgage loan servicer, or mortgage loan originator is conducting its business. This subdivision shall not be construed to prohibit suspended or barred persons from having their personal transactions processed by a licensed residential mortgage lender, residential mortgage loan servicer, or mortgage loan originator.

(e) This section shall apply to any violation, conviction, plea, or judgment after the enactment of this section.

(f) If any provision of this section or the application of this section to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(g) For purposes of this section, the term “employee” means (1) a mortgage loan originator, including a loan officer or other individual who negotiates agreements with the public, or (2) an individual with access to or responsibility for trust funds held by the licensee.

SEC. 75. Section 50320 of the Financial Code is amended to read:

50320. Whenever, in the opinion of the commissioner, a person is engaged, either actually or through subterfuge, in the business of making residential mortgage loans, servicing residential

mortgage loans, or engaging in business as a mortgage loan originator, without a license from the commissioner, the commissioner may order that person to desist and refrain. If, within 30 days after an order is served, a request for a hearing is filed in writing and the hearing is not held within 60 days of the filing, the order is rescinded. This section does not apply to persons exempted under subdivision (b) of Section 50002.

SEC. 76. Section 50325 of the Financial Code is amended to read:

50325. The commissioner may immediately revoke the residential mortgage lender's, residential mortgage loan servicer's, or mortgage loan originator's license if the licensee fails to comply with any order issued under Section 50318, 50319, 50321, 50322, or 50503. The commissioner shall not revoke the license if, within 10 days from the effective date of the revocation order, the licensee secures a court order restraining the enforcement of the commissioner's revocation order.

SEC. 77. Section 50333 of the Financial Code is amended to read:

50333. (a) The commissioner shall apply the guidance on nontraditional mortgage product risks published on November 14, 2006, by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, and the Statement on Subprime Mortgage Lending published on July 17, 2007, by the aforementioned entities and the National Association of Consumer Credit Administrators, to licensees.

(b) The commissioner may adopt emergency and final rules to clarify the application of this section as soon as possible.

(c) A licensee shall adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in the documents described in subdivision (a). A licensed mortgage loan originator shall adhere to policies and procedures developed by his or her employer in accordance with this division and applicable federal law and regulation.

SEC. 78. Section 50401 of the Financial Code is amended to read:

50401. (a) In addition to other fees and reimbursements required to be paid under this division, each residential mortgage lender or servicer licensee shall pay to the commissioner an amount equal to the lesser of: (1) its pro rata share of all costs and expenses

(including overhead and the maintenance of a prudent reserve not to exceed 90 days' costs and expenses) that the commissioner reasonably expects to incur in the current fiscal year in the administration of this division and not otherwise recovered by the commissioner under this division or from the State Corporations Fund, plus a deficit or less a surplus actually incurred during the prior fiscal year; or (2) five thousand dollars (\$5,000). The pro rata share shall be the greater of either one thousand dollars (\$1,000) or the sum of: (A) a number derived from the ratio of the aggregate principal amount of the mortgage loans secured by residential real property originated by the licensee to all mortgage loans secured by residential real property originated by all licensees under this division, as shown by the annual financial reports to the commissioner, which number is then multiplied by one-half of the costs and expenses estimated by the commissioner for the current fiscal year; plus (B) a number derived from the ratio of the average value of mortgage loans secured by residential real property serviced by a licensee to the average value of all mortgage loans secured by residential real property serviced by all licensees under this division, as shown by the annual financial reports to the commissioner, which number is then multiplied by one-half of the costs and expenses estimated by the commissioner for the current fiscal year. For the purposes of this section, the "principal amount" of a mortgage loan means the initial total amount a borrower is obligated to repay the lender and the "average value" of loans serviced means the sum of the aggregate dollar value of all mortgage loans secured by residential real property serviced by a licensee, calculated as of the last day of each month in the calendar year just ended, divided by 12.

In order for the commissioner to calculate the assessment under this section, each licensee shall file an annual report for the calendar year just ended containing the information required by the commissioner on or before March 1 of the year in which the assessment is to be calculated.

In determining the amount assessed, the commissioner shall consider all appropriations from the State Corporations Fund for the support of this division and all reimbursements provided for under this division.

(b) In no case shall the reimbursement, payment, or other fee authorized by this section exceed the cost, including overhead,

reasonably incurred in the administration of this division, and the maintenance of a prudent reserve not to exceed 90 days' costs and expenses.

(c) On or before the 30th day of September in each year, the commissioner shall notify each licensee by mail of the amount assessed and levied against it and that amount shall be paid within 20 days. If payment is not made within 20 days, the commissioner shall assess and collect a penalty, in addition to the assessment of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(d) If a licensee fails to pay the assessment on or before the 30th day following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the license issued to the licensee. An order issued under this section is not stayed by the filing of a request for a hearing. If, after an order is made, the request for hearing is filed in writing within 15 days from the date of service of the order and a hearing is not held within 60 days of the filing, the order is deemed rescinded as of its effective date. During a period when its license is revoked or suspended, a licensee shall not conduct business pursuant to this division except as may be permitted by further order of the commissioner. However, the revocation, suspension, or surrender of a license shall not affect the powers of the commissioner as provided in this division.

SEC. 79. Section 50513 is added to the Financial Code, to read:

50513. (a) The commissioner may do one or more of the following:

(1) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license for a violation of this division, or any rules or regulations adopted thereunder.

(2) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an applicant or licensee fails at any time to meet the requirements of Section 50141 or 50144, or withholds information or makes a material misstatement in an application for a license or license renewal.

(3) Order restitution against a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator for a violation of this division.

(4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

(5) Issue orders or directives to mortgage loan originators under this division as follows:

(A) Order or direct a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.

(B) Order or direct a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator to cease any harmful activities or violations of this division, including immediate temporary orders to desist and refrain.

(C) Enter immediate temporary orders to cease business under a license issued pursuant to the authority granted under Section 50002 if the commissioner determines that the license was erroneously granted or the mortgage loan originator is currently in violation of this division.

(D) Order or direct any other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

SEC. 80. Section 50601 of the Financial Code is repealed.

SEC. 81. Section 50602 of the Financial Code is repealed.

SEC. 82. Section 50700 of the Financial Code is amended to read:

50700. (a) A residential mortgage lender, or a person or employee acting under the authority of a residential mortgage lender's license, including a mortgage loan originator, shall not provide brokerage services to a borrower, except as provided in subdivision (c).

(b) "Brokerage services" means either of the following:

(1) Obtaining or attempting to obtain, on behalf of a borrower, a residential mortgage loan, as defined in subdivision (p) of Section 50003, secured by residential real estate, as defined in subdivision (w) of Section 50003, made with the funds of another institutional lender, as defined in paragraphs (1), (2), and (4) of subdivision (k) of Section 50003, and closed in the name of that lender, for a fee paid by the borrower or the institutional lender.

(2) Obtaining or attempting to obtain, on behalf of a borrower, a residential mortgage loan, as defined in subdivision (p) of Section 50003, secured by residential real estate, as defined in subdivision (w) of Section 50003, made with the funds of another institutional lender, as defined in paragraphs (1), (2), and (4) of subdivision (k) of Section 50003, but closed in the name of the licensee, for a fee paid by the borrower or the institutional lender.

(c) A residential mortgage lender or a mortgage loan originator employed by a residential mortgage lender may provide brokerage services under the authority of the lender's license, if the lender first enters into a written brokerage agreement with the borrower that satisfies the requirements of Section 50701.

(d) This chapter does not authorize a residential mortgage lender licensee to do any of the following:

(1) Provide brokerage services through independent contractors.

(2) Provide brokerage services through an employee not licensed as a mortgage loan originator.

(3) Obtain or attempt to obtain for a borrower a residential mortgage loan that is a "high cost mortgage," referred to in Section 152(aa)(1) of the federal Home Ownership and Equity Protection Act of 1994, as amended (15 U.S.C. Sec. 1602(aa)).

(4) Hold itself out to borrowers, through advertising, as a mortgage broker, rather than a residential mortgage lender. However, a licensee shall disclose its status as a broker or agent when that disclosure is required by law.

(5) Perform activity subject to Section 10131 of the Business and Professions Code, except activities authorized by this division.

(e) A mortgage loan originator may only provide brokerage services as an employee of a licensed residential mortgage lender.

SEC. 83. Section 50701 of the Financial Code is amended to read:

50701. (a) As soon as practical after a borrower requests that the residential mortgage lender licensee arrange a loan to be made by another institutional lender, and before the licensee performs brokerage services for the borrower, the licensee and borrower shall enter into a written loan brokerage agreement that satisfies the requirements of this section.

(b) Both the licensee's authorized representative, who shall be a licensed mortgage loan originator, and the borrower shall sign and date the loan brokerage agreement, and the licensee shall deliver a copy of the fully executed loan brokerage agreement to the borrower either upon execution, if the documents are signed in the licensee's office, or within three business days after execution.

(c) The loan brokerage agreement shall include the mortgage loan originator's unique identifier.

(d) The loan brokerage agreement shall contain an explicit statement that (1) the licensee is acting as the agent of the borrower in providing brokerage services to the borrower, and (2) when acting as agent for the borrower, it owes to that borrower a fiduciary duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the licensee is authorized to act as an agent for any other person, the brokerage agreement shall contain a statement of that fact and identification of that person.

(e) The loan brokerage agreement shall contain a detailed description of the services the licensee agrees to perform for the borrower, and a good faith estimate of any fees the licensee will receive for those services, whether paid by the borrower, the institutional lender, or both.

(f) The loan brokerage agreement shall carry a clear and conspicuous statement of the conditions under which the borrower is obligated to pay the licensee for brokerage services rendered under the agreement.

(g) The loan brokerage agreement shall provide that, if the licensee makes a materially false or misleading statement or omission in the inducement or implementation of the agreement,

the borrower may, in addition to any other legal rights or remedies, upon written notice, do any of the following:

(1) Rescind the brokerage agreement.

(2) Recover fees paid by the borrower to the licensee for brokerage services rendered by the licensee pursuant to the agreement.

(3) Recover actual costs, including attorney's fees, for enforcing the borrower's rights under the loan brokerage agreement.

(h) If the loan brokerage agreement fails to set forth the rights in subdivision (g), these rights shall be implied by operation of law.

(i) The loan brokerage agreement shall be the only agreement between the borrower and the licensee with respect to a single loan.

(j) A licensee whose services to a borrower are limited to providing brokerage services may not require a borrower to pay fees or charges before the residential mortgage loan closing, other than either of the following:

(1) Actual charges to be incurred by the licensee on behalf of the borrower for services from third parties necessary to process the application, such as credit reports, appraisals, inspections, flood certification, and tax service, and, in transactions where those services are provided by the licensee, a charge not to exceed the fee customarily charged for the same or comparable service in the community in which the service was rendered.

(2) An application fee.

A licensee may not accept a fee under Section 50203(a)(1) or (2) and subsequently require a borrower to pay additional fees or charges under this paragraph for the borrower's loan transaction.

(k) Any loan brokerage agreement that provides for the collection of an application fee shall be approved as to form by the commissioner before its use by a licensee, if the agreement meets the following requirements:

(1) The agreement specifies the services to be rendered for the application fee.

(2) The agreement sets forth the amount of the application fee and the date the fee becomes due and payable.

(3) The agreement does not contain a provision that purports to except or relieve the licensee from the responsibility to fulfill verbal commitments and representations made by employees or

agents of the licensee when contracting for the application fee, or guarantee that a loan will be obtained.

(4) The agreement sets forth a definite date for full performance of the services promised in exchange for the application fee.

SEC. 84. Section 50705 of the Financial Code is repealed.

SEC. 85. Section 18034 is added to the Health and Safety Code, to read:

18034. (a) A dealer, as defined in Section 18002.6, or a salesperson, as defined in Section 18013, is not required to be licensed as a mortgage loan originator under the provisions of state law that implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289), if the dealer or salesperson performs only administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator, and if the dealer or salesperson does not accept compensation from a lender, mortgage loan originator, or from any agent of any lender or mortgage loan originator.

(b) For purposes of this section, the term “administrative and clerical tasks” means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

SEC. 86. The Legislature finds and declares that Sections 6, 20, and 61 of this act imposes a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow the Department of Real Estate and the Department of Corporations to fully accomplish their goals, it is imperative to protect the interests of those persons submitting information to the departments to ensure that any personal or sensitive business information that this act requires those persons to submit is protected as confidential information.

SEC. 87. Every person who is required to hold a mortgage loan originator license under the California Finance Lenders Law or the California Residential Mortgage Lending Act shall obtain that

license by July 31, 2010. Every person who is required to hold a mortgage loan originator license endorsement under the Real Estate Law shall obtain that license endorsement by December 31, 2010. No person required to hold a mortgage loan originator license under the California Finance Lenders Law or the California Residential Mortgage Lending Act shall be required to obtain that license before July 1, 2010. No person required to hold a mortgage loan originator license endorsement under the Real Estate Law shall be required to obtain that license endorsement before December 1, 2010.

SEC. 88. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 89. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 90. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the Department of Real Estate and the Department of Corporations to begin initiating the operational changes necessary to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 within the timeframes required by federal law, it is necessary that this act take effect immediately.

Approved _____, 2009

Governor